TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 393.

JOHN K. TIFFANY, SURVIVING TRUSTEE OF THE ESTATE OF JOHN F. DARBY, BANKRUPT, PLAINTIFF IN ERROR,

vs.

THE NATIONAL BANK OF THE STATE OF MISSOURI.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICTS OF MISSOURI.

FILED JUNE 13, 1872.

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1 MISSOURI DISTRICTS, *sct:*

Pleas before the honorable circuit court of the United States for the districts of Missouri at the April term, A. D. 1872.

JOHN K. TIFFANY, SURVIVING TRUSTEE, &C. plaintiff,
vs.
THE NATIONAL BANK OF THE STATE OF MISSOURI, defendant.

Transferred from the district court of the United States for the eastern district of Missouri.

Be it remembered that, heretofore, to wit, on the 26th day of April, A. D. 1871, there was filed in the clerk's office of said circuit court a transcript of the orders made in this case by the district court of the United States for the eastern district of Missouri, which transcript is in the words and figures following, to wit:

Transcript.

UNITED STATES OF AMERICA,
Eastern District of Missouri, ss:

In the district court of said United States in and for said district.

ANDREW PARK & JOHN K. TIFFANY, trustees in bankruptcy of John F. Darby, bankrupt, plaintiffs,
ag'st
THE NATIONAL BANK OF THE STATE OF MISSOURI, defendant.
} Action of debt.

2 *Declaration filed.*

AT ST. LOUIS, IN SAID DISTRICT,
Saturday, 30th April, A. D. 1870.

This day come the plaintiffs, by attorneys, and file their declaration in debt against the defendant herein.

Order for summons.

And on motion of said attorneys it is ordered by the court that a summons be issued against the defendant, returnable on the third Monday of May next, 1870.

Demurrer filed.

ANDREW PARK ET AL., TRUSTEES, &C., PL'FFS,
ag'st
THE NATIONAL BANK OF THE STATE OF MO., def't.
} Action of debt.

AT ST. LOUIS, IN SAID DISTRICT,
Thursday, 19th May, A. D. 1870.

This day comes the defendant, by its attorneys, and files its demurrer to the declaration of plaintiffs heretofore filed herein against it.

Death of And. Park, one of the pl'ffs, suggested.

ANDREW PARK ET AL., TRUSTEES, &C., PLAINTIFFS, *ag'st* THE NATIONAL BANK OF THE STATE OF MISSOURI, defendant. } Action in debt.

AT ST. LOUIS, IN SAID DISTRICT,
Friday, 3d February, A. D. 1871.

This day comes William F. Causey, one of the attorneys for the plaintiff herein, and suggests to the court that Andrew Park, one of said plaintiffs, hath departed this life; thereupon, on motion of said attorney,

Order that suit proceed in name of remaining plaintiff.

3 It is ordered by the court that this suit proceed in the name of the remaining plaintiff, John K. Tiffany, as surviving trustee in bankruptcy of John F. Darby, bankrupt.

Continuance.

JOHN K. TIFFANY, SURVIVING TRUSTEE, &C., plaintiff. *ag'st* THE NATIONAL BANK OF THE STATE OF MISSOURI, defendant. } Action of debt.

AT ST. LOUIS, IN SAID DISTRICT,
Friday, 17th February, A. D. 1871.

It is ordered that this cause be now continued until the next term of this court.

Demurrer argued and submitted.

February term, A. D. 1871.

SATURDAY, *25th February*, 1871.

IN CASE NO. 1814 OF JOHN K. TIFFANY, trustee, &c., plaintiff, *ag'st* THE NATIONAL BANK OF THE STATE OF MISSOURI, defendant. } No. 1814. Debt.

This day come the parties, by their respective attorneys, and the demurrer filed by said defendant to the declaration of the plaintiff herein having been set down for hearing, the same was thereupon heard and argued by counsel and submitted to the court, which, not being fully advised in the premises, took further time to consider of its judgment thereon.

February term, A. D. 1871.

MONDAY, 6*th March*, *A. D.* 1871.

4 *Judgment on demurrer.*

IN CASE NO. 1814 OF JOHN K. TIFFANY, trustee, &c., plaintiff, *ag'st* THE NATIONAL BANK OF THE STATE OF MISSOURI, defendant. } No. 1814. Debt.

This day come again the parties, by their respective attorneys, and the court, having examined the questions of law arising upon the demurrer heretofore filed by the said defendant to the declaration of plaintiff herein, and being fully advised of and concerning the same, is of opinion that the law on said demurrer as far as the said demurrer relates to the first, second, and third counts contained in said declaration, is for the defendant, and in accordance with such opinion now orders that said demurrer as to said first, second, and third counts be, and the same is hereby, sustained; and is of opinion that the law on said demurrer, as far as the said demurrer relates to the fourth, fifth, sixth, seventh, eighth, and ninth counts, contained in said declaration, is for the plaintiff, and in accordance with such opinion now orders that said demurrer, as to said fourth, fifth, sixth, seventh, eig'th, and ninth counts be, and the same is hereby, overruled.

February term, A. D. 1871.

TUESDAY, 7*th March*, 1871.

5 *Plea filed.*

IN CASE NO. 1814 OF JOHN K. TIFFANY, TRUSTEE, &c., plaintiff, *ag'st* THE NATIONAL BANK OF THE STATE OF Missouri, defendant. } No. 1814. Debt.

This day comes the defendant, by Messrs. Sharp and Broadhead, its attorneys, and files its plea of nil debet to the fourth, fifth, sixth, seventh, eighth, and ninth counts of the declaration of plaintiff herein against it.

Judgment on demurrer set aside.

February term, A. D. 1871.

FRIDAY, 10*th March*, *A. D.* 1871.

IN CASE NO. 1814 OF JOHN K. TIFFANY, TRUSTEE, &c., plaintiff, *ag'st* THE NATIONAL BANK OF THE STATE OF MISSOURI, defendant. } No. 1814. Debt.

This day come the parties, by their respective attorneys, and on the motion of Samuel Knox, esquire, attorney for said plaintiff, it is

ordered that the judgment heretofore rendered by this court on the demurrer filed by said defendant to the declaration in this cause be, and the same is hereby, now set aside and rescinded.

Case transferred.

And by consent of said Samuel Knox, esquire, attorney for plaintiff, and James O. Broadhead, esquire, attorney for defendant, it is also ordered that the declaration, pleas, and other papers in this cause, including a transcript of the proceedings had and orders made by this
6 court in said cause, be certified and transmitted to the circuit court of the United States in and for the districts of Missouri, for trial in said court.

Clerk's certificate.

UNITED STATES OF AMERICA,
Eastern District of Missouri, ss:

I, Joseph H. Clark, clerk of the district court of the United States in and for the eastern district of Missouri, do hereby certify the writing hereto annexed to a true transcript of the proceedings had and orders made by said court, in case No. 1814, A. D. 1870, of John K. Tiffany, surviving trustee, &c., plaintiff, against The National Bank of the State of Missouri, defendant, as fully as the same remain of record in said case, in my office.

In witness whereof I hereunto subscribe my name, and affix the seal of said court, at office in the city of St. Louis, in said district, this 26th day of April in the year of our Lord eighteen hundred and seventy-one.

[SEAL.] JOSEPH H. CLARK,
Clerk of said court.

And on said 26th day of April, A. D. 1871, there was also filed in the clerk's office of said circuit court the following original
7 declaration in this case; which declaration is in the words and figures following, to wit:

Declaration.

UNITED STATES OF AMERICA,
Districts of Missouri, ss:

In the district court of the United States for the eastern district of Missouri.

Andrew Park and John K. Tiffany, trustees of the estate and effects of John F. Darby, of the city and county of St. Louis, and State of Missouri, a bankrupt, duly appointed under the act of Congress of the United States, entitled "An act to establish a uniform system of bankruptcy throughout the United States," approved March 2d, 1867, complain of the National Bank of the State of Missouri, a corporation organized under the laws of the State of Missouri and the act of Congress of the United States, entitled "An act to provide a national currency, secured by a pledge of United States bonds, and to provide for the circulation and redemption thereof," approved June 3d, 1864, in an action of debt: for that whereas, on the first day of July, 1869, to wit, at the eastern district of Missouri, the said John F. Darby filed his

petition in the district court for said eastern district of Mis-
8 souri to be declared a bankrupt, and such proceedings were there-
upon had that, on the twelfth day July, 1869, the said Darby was by said court adjudged a bankrupt; and on the second day of November, 1869, the said plaintiffs were by said court appointed, in conformity with said act of Congress, approved March 2d, 1867, trustees of the estate of said bankrupt, and all the estate, property, credits, and effects of said bankrupt were and are vested in said plaintiffs; that, whereas, on the fifth day of May, A. D. 1866, it was corruptly and unlawfully agreed between the said defendants and the said John F. Darby that the said defendants should bargain and loan to the said John F. Darby the sum of twenty-five (25) thousand dollars, and should allow and give to the said John F. Darby day of payment therefor for the space of three years from that time; and that the said John F. Darby should, at the end and expiration of each and every six months thereafter, until the expiration of the said three years, corruptly and unlawfully pay said defendant more interest therefor than interest at the rate of eight per centum per annum for the forbearance and giving day of payment for said three years, and each of said terms of six months,
9 to wit: that the said John F. Darby should, at the end of the said first term of six months from the day aforesaid, give and corruptly pay the said defendant eleven hundred and twenty-five dollars; and at the end of one year from said date said Darby should give and corruptly pay said defendants the additional sum of eleven hundred and twenty-five dollars; and at the end of eighteen months from said date said Darby should give and corruptly pay said defendants the further additional sum of eleven hundred and twenty-five dollars; and at the expiration of two years from said date said Darby should give and corruptly pay said defendants the further additional sum of eleven hundred and twenty-five dollars; and at the end of two years and six months said Darby should give and corruptly pay said defendants the further additional sum of eleven hundred and twenty-five dollars; and at the end of three years from said date said Darby should give and corruptly pay said defendants the further additional sum of eleven hundred and twenty-five dollars; making, in all, the sum of six thousand seven hundred and fifty dollars for the forbearance and giving day of pay-
10 ment for the said sum of twenty-five thousand dollars, loaned as aforesaid for the term of three years next after the day aforementioned. And the plaintiffs further aver that, in pursuance of the said corrupt and unlawful agreement, the said defendants and said John F. Darby then and there agreed, to wit, on the said fifth day of May, A. D. 1866, at the said city and county of St. Louis & districts of Missouri aforesaid, that said Darby should make and execute his several promissory negotiable notes for the payment of said principal sum of twenty-five (25) thousand dollars, payable in three years from the date aforesaid, and his six promissory negotiable notes, each for the said sum of eleven hundred and twenty-five dollars, payable respectively in six, twelve, and eighteen months, and in two years, two years and a half, and three years from the date aforesaid, all said notes to be dated upon the said fifth day of May, A. D. 1866, and to bear interest at the rate of nine per centum per annum after maturity, payable to the order of Walter H. Darby, a son of the said John F. Darby, and to be by him endorsed without recourse upon him, and secured by a deed of trust upon certain property of the said John F. Darby, situated in the said city & county of St. Louis, in block number one hundred and
11 sixteen of said city of St. Louis. And the plaintiffs further aver

that the said John F. Darby did thereupon make and execute, in pursuance of said corrupt and unlawful agreement, his said seven notes above described, to the order of said Walter H. Darby, and did make and execute his said deed of trust upon said property to secure the payment of said notes, which were thereafter endorsed, without recourse upon him, by the said Walter H. Darby, and delivered to the defendants, who thereupon loaned and advanced the said sum of twenty-five thousand dollars to the said John F. Darby. And plaintiffs further aver that, at the time of making said corrupt and unlawful agreement, as well as at the time of receiving the payments therein corruptly and unlawfully agreed for, the defendants were, by the said act of Congress of the United States, allowed to take, receive, reserve, and charge on any loan or discount made, interest at the rate allowed by the laws of the State where said bank was located, and no more, except that where, by the laws of any State a different rate was limited for banks of issue organized under State laws, the rate so limited should be allowed for associations organized under said act of Congress in such State. And the plaintiffs further aver that, at said time, the banks of issue organized under the laws of the said State of Missouri, were by law limited to
12 the taking, receiving, and charging of interest at the rate of eight per centum per annum and no more. And the plaintiffs further aver that, notwithstanding the defendants were so limited by the laws of the United States and State of Missouri, to the taking of interest at said rate of eight per centum per annum there, on the expiration of the said terms of six, twelve, and eighteen months, and of two years, two and one half and three years as aforesaid, upon maturity of said interest and principal notes, the said John F. Darby did corruptly and unlawfully pay the said defendants, and the said defendants did then & there corruptly and unlawfully receive of the said John F. Darby, the sum of eleven hundred and twenty-five dollars at the end of each of said terms above set forth, as interest, and upon the expiration of said term of three years, the sum of twenty-five thousand dollars principal, according to said corrupt agreement aforesaid between them made, for the said forbearance and giving day of payment, for the said sum of twenty-five thousand dollars, loaned as aforesaid for the space and term of three years only as aforesaid; being, in all, the sum of six thousand seven hundred and fifty dollars as aforesaid as interest, being interest
13 at the rate of nine per centum per annum; all which was against the act of Congress of the United States approved June 3d, 1864, aforesaid. And plaintiffs further aver that said unlawful transactions occurred within two years next preceding the filing of this their declaration. By means whereof the said defendants have forfeited and ought to pay twice the amount of interest to them so paid by the said Darby, to wit, the sum of ($13,500) thirteen thousand five hundred dollars, to the use of the plaintiffs, who sue for the same as by said act of Congress provided; and whereof said defendants have had due notice, yet they have never paid the same, though requested, but owe and unjustly detain it.

For that whereas also it was corruptly and unlawfully agreed between the said defendants and the said John F. Darby, on the second day of January, A. D. 1868, that the said defendants should bargain and loan to the said John F. Darby the sum of twenty-five thousand dollars additional, and should allow and give to the said John F. Darby day of payment therefor for the space of sixty days from that date, and that the said John F. Darby should, at the time said money should be advanced and loaned to him, *should* corruptly and unlawfully pay said

defendants more interest therefor than interest at the rate of eight
14 per centum per annum for the forbearance and giving day of payment for said sixty days, to wit, that the said John F. Darby should, at the time of the making of said loan, to wit, on said second day of January, A. D. 1868, give and corruptly pay the said defendants five hundred and thirty-three and $\frac{34}{100}$ dollars for the forbearance and giving day of payment for the said sum of twenty-five thousand dollars in this count mentioned, loaned as aforesaid for the term of sixty days next after the day aforementioned. And the plaintiffs further aver that, in pursuance of the said corrupt & unlawful agreement, the said defendants and the said John F. Darby then & there further agreed, to wit, on the said second day of January, A. D. 1868, at the city & county of St. Louis & districts of Missouri aforesaid, that said Darby should make and execute his certain promissory note for the payment of the said twenty-five thousand dollars, payable in sixty days from the date aforesaid, and dated upon said second day of January, A. D. 1868, and to bear interest at the rate of eight per centum per annum after maturity, payable to his own order, and secured by a deed of trust upon certain property of the said John F. Darby, situated in the said city & county of St. Louis, in block numbered one hundred and sixteen of said city of St. Louis. And the plaintiffs further aver that the said John
15 F. Darby did thereupon make and execute, in pursuance of said corrupt and unlawful agreement, his said promissory note above described, to his own order, and did make and execute his said deed of trust upon said property to secure the payment thereof, and did endorse said note and delivered said note and deed to the defendants and paid to said defendants said sum of five hundred and thirty-three and $\frac{34}{100}$ dollars, and in addition the sum of twelve and $\frac{50}{100}$ dollars for United States stamps placed upon said deed, and the sum of one and $\frac{50}{100}$ dollars fee for recording the same in the recorder's office of St. Louis County, corruptly & unlawfully. And the defendants further and there did corruptly and unlawfully receive said sums and said note & deed of trust, according to the terms of said corrupt agreement between them made for said forbearance, and giving day of payment for said sum of twenty-five thousand dollars loaned as aforesaid for the space of sixty days only as aforesaid. And plaintiffs further aver that, thereafter, to wit, on the fifth day of March, A. D. 1868, the said corrupt & unlawful loan and said promissory note, made and executed in pursuance of said unlawful & corrupt agreement, became due and payable, but the said John F. Darby did not pay the same, but that then and
16 there it was corruptly and unlawfully agreed between the said defendants and the said John F. Darby that the said defendants should bargain and loan and extend the time of payment of said sum of twenty-five thousand dollars and said note, and should allow and give to the said John F. Darby day of payment therefor for the space of six months from that date, to wit, the said fifth day of March, A. D. 1868, and that the said John F. Darby should, at the time and then & there corruptly and unlawfully pay said defendants more interest therefore than interest at the rate of eight per centum per annum for the forbearance and giving day of payment for said six months, to wit, that the said John F. Darby, on said fifth day of March, A. D. 1868, should give and corruptly pay said defendants the sum of twelve hundred and fifty dollars for the forbearance, and giving day of payment for the said sum of twenty-five thousand dollars, loaned, as aforesaid, for the term of six months next after the day aforementioned, and no longer. And the plaintiffs further aver that the said John F. Darby did then &

there, to wit, on the said fifth day of March, A. D. 1868, pay to the defendants corruptly & unlawfully and the defendants did corruptly and unlawfully receive the said sum of twelve hundred and
17 fifty dollars for said forbearance and giving day of payment for said sum of twenty-five thousand dollars in this count mentioned, loaned, as aforesaid, for the space of sixty days only, as aforesaid, and extended and loaned for the space of six months additional only, as aforesaid. And the plaintiffs further aver that, afterwards, to wit, on the fifth day of September, the said corrupt and unlawful loan and said promissory note, made and executed and extended in pursuance of said unlawful & corrupt agreements, became due and payable, but the said John F. Darby did not pay the same, but that then and there it was corruptly and unlawfully agreed between the said defendants and the said John F. Darby that the said defendants should bargain & loan, and extend the time of payment of said sum of twenty-five thousand dollars, and said note, and should allow and give to the *to the* said John F. Darby day of payment therefor for the space of three months, to wit, to the fifth day of December, A. D. 1868, without grace; and that the said John F. Darby should, at the time, and then and there, corruptly and unlawfully pay said defendants more interest therefor than interest at the rate of eight per centum per annum, for the forbearance and giving day of payment for said three months, to wit, that the said John F. Darby, on said fifth day of September,
18 A. D. 1868, should give and corruptly pay said defendants the sum of six hundred and twenty-five dollars for the forbearance & giving day of payment for the said sum of twenty-five thousand dollars loaned, as aforesaid, for the term of three months next after the day aforementioned and no longer. And the plaintiffs aver that the said John F. Darby did, then and there, to wit, on said fifth day of September, A. D. 1868, corruptly and unlawfully pay to the defendants, and the defendants did corruptly and unlawfully receive the said sum of six hundred and twenty-five dollars for said forbearance and giving day of payment for said sum of twenty-five thousand dollars in this count before mentioned, loaned, as aforesaid, for the space of sixty days only, as aforesaid, and extended, and loaned for the space of six months only, as aforesaid, and further extended, and loaned for the space of three months additional only, as last aforesaid. And plaintiffs further aver that, thereafter, to wit, on or about the third day of November, A. D. 1868, the said John F. Darby did pay, and the defendants did receive, the said twenty-five thousand dollars, loaned & extended as aforesaid, and said note and deed of trust were cancelled and delivered up to him, said John F. Darby. And the plaintiffs further
19 aver that, at the time of making said corrupt and unlawful agreements, as well as at the time of receiving the payments, therein corruptly and unlawfully agreed for, the defendants were, by the said act of Congress of the United States, allowed to take and receive, reserve and charge on any loan or discount made, interest at the rate allowed by the law of the State where said bank was located, and no more, except that where, by the laws of any State, a different rate was limited for banks of issue, organized under State laws, the rate so limited should be allowed for associations organized under said act of Congress in such States. And the plaintiffs further aver that, at said times, the banks of issue, organized under the laws of the said State of Missouri, were, by law, limited to the taking, receiving, reserving, and charging of interest at the rate of eight per centum per annum and no more: Notwithstanding which, the said defendants, at the times set

forth, received the said sums, to wit, on the 2d January, 1868, for sixty days, five hundred and thirty-three and $\frac{34}{100}$ dollars; on the 5 March, 1868, for six months, twelve hundred and fifty dollars; and, on the 5th September, 1868, for three months, six hundred and twenty-five dollars, as above set forth, according to the terms of said corrupt and un-
20 lawful agreements made for the said forbearance and giving day of payment for the said sum of twenty-five thousand dollars or interest at a greater rate than eight per centum per annum, as aforesaid: all which was against the act of Congress of the United States, approved June 3d, 1864, aforesaid. And plaintiffs further aver that said unlawful transactions occurred within two years next preceding the filing of this their declaration. By means whereof the said defendants have forfeited, and ought to pay, twice the amount of interest by the said John F. Darby to them so paid, to wit, twice the sum of five hundred and thirty-three $\frac{34}{100}$ dollars, or the sum of one thousand and sixty-six and $\frac{68}{100}$ dollars, by him paid & them received on said 2 January, 1868; twice the sum of twelve hundred and fifty dollars, or twenty-five hundred dollars by him paid, and by them received, on the said fifth day of March, 1868; twice the sum of six hundred and twenty-five dollars, or twelve hundred and fifty dollars by him paid on said 5th day of September, 1868, or the entire sum of forty-eight hundred & sixteen $\frac{68}{100}$ dollars, to the use of the plaintiffs, who sue for the same, as by said act of Congress provided, and whereof said defendants have had due notice; yet they have never paid the same, though
21 requested, but owe and unjustly detain it.

For that whereas also it was corruptly and unlawfully agreed between the said defendants and the said John F. Darby, afterwards, to wit, on the twenty-fifth day of February, A. D. 1868, that the said defendants should bargain and loan to the said John F. Darby the further sum of fifty thousand dollars additional, and should allow and give to the said John F. Darby day of payment therefor for the space of six months from that date, and that the said John F. Darby should, at the time said money should be advanced and loaned to him, *should* corruptly and unlawfully pay said defendants more interest therefor than interest at the rate of eight per centum per annum, for the forbearance and giving day of payment for said six months, to wit, that the said John F, Darby should, at the time of the making of said loan, to wit, on said 25 day of February, A. D. 1868, give and corruptly pay the said defendants twenty-five hundred and sixty-nine $\frac{42}{100}$ dollars, for the forbearance and giving day of payment for the said sum of fifty thousand dollars, in this count mentioned, loaned as aforesaid, for the term of six months next after the day aforementioned. And the plaintiffs further
22 aver that, in pursuance of the said corrupt & unlawful agreement, the said defendants and the said John F. Darby further agreed, then & there, to wit, on said 25 day of February, A. D. 1868, at the city & county of St. Louis and districts of Missouri, aforesaid, that said Darby should make and execute his two certain promissory notes, for the payment of the said sum of fifty thousand dollars, each for one-half thereof, or twenty-five thousand dollars, and payable each in six months from the date aforesaid, and dated upon said 25 day of February, A. D. 1868, *at* to bear interest at the rate of ten per centum per annum after maturity, payable to his own order, and secured by a deed of trust upon certain property of the said John F. Darby, situated in the said city & county of St. Louis, in block numbered one hundred and sixteen of said city of St. Louis. And the plaintiffs further aver that the said John F. Darby did thereupon make and execute, in pursuance of

said corrupt and unlawful agreement, his said two promissory notes to his own order as above described, & did endorse the same, and did make, execute, & record his said deed of trust upon said property, to secure the payment thereof, and did deliver said notes and said deed to the defendants, and did pay to the defendants unlawfully & corruptly
23 the said sum of twenty-five hundred and sixty-nine & $\frac{42}{100}$ dollars, for said forbearance and giving day of payment for six months only as aforesaid. And the defendants did then and there corruptly and unlawfully receive said sum, & said notes & deed of trust, according to the terms of said corrupt & unlawful agreement between them made for said forbearance and giving day of payment for said sum of fifty thousand dollars for the space of six months only as aforesaid. And plaintiffs further aver that, thereafter, to wit, on the twenty-eighth day of August, A. D. 1868, the said corrupt and unlawful loan, and said promissory notes, made and executed in pursuance of said unlawful & corrupt agreement, became due and payable, and the said John F. Darby did not pay the same, but that then & there it was corruptly and unlawfully agreed, between said defendants and the said John F. Darby, that the said defendants should bargain and loan, and extend the time of payment of said sum of fifty thousand dollars and said note, and should allow and give to the said John F. Darby day of payment therefor for the space of three months from that date, to wit, the said 28 day of August, 1868, and that the said John F. Darby should, at the time, and then and there, corruptly and unlawfully pay said defendants more
24 interest therefor than interest at the rate of eight per centum per annum, for the forbearance and giving day of payment for said three months, to wit, that the said John F. Darby, on said twenty-eighth day of August, A. D. 1868, should give and corruptly pay said defendants the sum of twelve hundred and fifty dollars, for the forbearance and giving day of payment for said sum of fifty thousand dollars, loaned as aforesaid for the term of three months next after the day aforementioned, and no longer, and without grace. And plaintiffs further aver, that the said John F. Darby did, then and there, to wit, on said 28 day of August, 1868, unlawfully and corruptly paid to said defendants, and said defendants did unlawfully and corruptly receive said sum of twelve hundred and fifty dollars, for said forbearance and giving day of payment for said sum of fifty thousand dollars, in this count mentioned, loaned as aforesaid for the space of six months only, as aforesaid, and extended and loaned for the space of three months only, without grace, as aforesaid. And plaintiffs further aver that, thereafter, to wit, on or about the the third day of November, A. D. 1868, said John F. Darby did pay, before the maturity thereof, & the said defendants did receive the said sum of fifty thousand dollars, loaned as aforesaid, and said notes, extended as aforesaid,
25 and said deed of trust were cancelled and delivered up to him, the said John F. Darby. And the plaintiffs further aver that, at the time of making said corrupt and unlawful agreements, as well as at the time of receiving the payments therein, corruptly and unlawfully agreed for, the defendants were, by the act of Congress of the United States aforesaid, allowed to take & receive, reserve and charge, on any loan or discount made, interest at the rate allowed by the laws of the State where said bank was located, and no more, except that where by the laws of any State a different rate was limited for banks of issue, organized under State laws, the rate so limited should be allowed for associations organized under said act of Congress in such State. And the plaintiffs further aver that, at said times the banks of issue, or-

ganized under the laws of the said State of Missouri, were, by law, limited to the taking, receiving, reserving, and charging of interest at the rate of eight per centum per annum, and no more; notwithstanding which, the said defendants, though so limited at the times set forth, received the said sums as interest, to wit, on the 25 February, A. D. 1868, two thousand five hundred and sixty-nine $\frac{42}{100}$ dollars, and on the 28 August, 1868, twelve hundred and fifty dollars, as above set
26 forth, according to the terms of said corrupt and unlawful agreements made, for the forbearance and giving day of payment for the said sum of fifty thousand dollars for said six and three months only, as aforesaid, or interest at a greater rate than eight per centum per annum, as aforesaid: all which was against the act of Congress of the United States, approved June 3d, 1864, aforesaid. And plaintiffs further aver that *that* said unlawful transactions occurred within two years next preceding the filing of this their declaration. By means whereof the said defendants have forfeited and ought to pay twice the amount of interest by the said John F. Darby to them so paid, to wit: twice the sum of two thousand five hundred and sixty-nine $\frac{42}{100}$ dollars, or five thousand one hundred and thirty-eight and $\frac{84}{100}$ dollars, by him paid and them received on the 25 February, A. D. 1868; and twice the sum of twelve hundred and fifty dollars, by him paid & them received on the 28 August, 1868, or twenty-five hundred dollars, or the entire sum of seven thousand six hundred and thirty-eight $\frac{84}{100}$ dollars to the use of the plaintiffs, who sue for the same, as by said act of Congress provided, and whereof said defendants have had due notice; yet they have never paid the same, though requested, but owe & unjustly
27 detain it. For that whereas also it was corruptly and unlawfully agreed between the said defendants and the said John F. Darby afterwards, to wit, on the third day of September, A. D. 1868, that the said defendants should bargain and loan to the said John F. Darby, the further sum of one hundred and thirty-eight thousand seven hundred and fifty dollars additional, and should allow and give the said John F. Darby day of payment therefor for a short time, and that the said John F. Darby should, when said loan was paid, corruptly and unlawfully pay said defendants interest at a greater rate than interest at the rate of eight per centum per annum, for the forbearance and giving day of payment for the said sum of $138{,}750_{\frac{00}{100}}$ dollars. And plaintiffs aver that, thereupon, the defendants honored the check of the said John F. Darby on them, for the said sum of one hundred and thirty-eight thousand and seven hundred and fifty dollars, dated upon said third day of September, to the order of the county-auditor of St. Louis County, for bonds, and received the said bonds as security for the payment of said loan and the said corrupt and unlawful interest, contracted to be paid to them by the said John F. Darby therefor. And the plaintiffs further aver that, on or about the fifteenth day of October, A. D. 1868, in pursuance of said corrupt and unlawful agreement, the said John F. Darby did corruptly and unlawfully pay
28 the said defendants, and the said defendants did corruptly receive the said sum of one hundred and thirty-eight and seven hundred and fifty dollars, so loaned to him by the said defendants, and then and there the said John F. Darby, in pursuance of the said corrupt & unlawful agreement, did unlawfully and corruptly pay, and the defendants did corruptly and unlawfully receive, the sum of twenty-two hundred and eighty and forty-two one-hundredths dollars, for said forbearance and giving day of payment for the said one hundred and thirty-eight thousand seven hundred and fifty dollars, from the said

third day of September, A. D. 1868, to the said fifteenth day of October, A. D. 1868, or forty-one days, being interest at a greater rate than eight per centum per annum. And the plaintiffs aver that, at the time of making said corrupt and unlawful agreement, as well as at the time of receiving said sums of money paid in pursuance thereof, the defendants were, by act of Congress of the United States aforesaid, allowed to take & receive, reserve and charge, on *on* any loan or discount made, interest at the rate allowed by the laws of the State where said bank was located, and no more, except that where, by the laws of any State, a different rate was limited for banks of issue organized under State laws, the rate so
29 limited should be allowed for associations organized under said act of Congress in such State. And the plaintiffs further aver that, at said times, the banks of issue organized under the laws of the said State of Missouri were, by law, limited to the taking, receiving, and charging of interest at the rate of eight per centum per annum, and no more; nothwithstanding which, said defendants, though so limited, at the times set forth received the said sum as interest, to wit, on the 25 October, A. D. 1868, twenty-two hundred and eighty $\frac{42}{100}$ dollars, as above set forth, according to the terms of said corrupt and unlawful agreements made, for the forbearance and giving day of payment for the said sum of one hundred and thirty-eight thousand seven hundred and fifty dollars, for said forty-one days, or interest at a greater rate than eight per centum per annum as aforesaid: all which was against the act of Congress of the United States, approved June 3d, 1864, aforesaid. And the plaintiffs further aver that the said unlawful transactions occur'ed within two years next preceeding the filing of this their declaration. By means whereof, the said defendants have forfeited, and ought to pay twice the amount of interest by the said John F. Darby to them so paid to wit, twice the sum of twenty-two hundred and eighty
30 and $\frac{42}{100}$ dollars, or forty-five hundred and sixty $\frac{84}{100}$ dollars by him paid and them received on the 15 October, A. D. 1868, to the use of the plaintiffs, who sue for the same as by said act of Congress provided, and whereof said defendants have had due notice; yet they have never paid the same, though requested, & unjustly detain it.

For that whereas also it was corruptly and unlawfully agreed between the said defendants and the said John F. Darby, afterwards, to wit, on the fifteenth day of October, A. D. 1868, that the said defendants should bargain and loan to the said John F. Darby, the further sum of twelve thousand eight hundred and ninety-two $\frac{92}{100}$ dollars, and should allow & give the said John F. Darby day of payment therefor for the space of sixty days; and that the said John F. Darby should, at the time of the making of said agreement, corruptly and unlawfully pay said defendants interest at a greater rate than interest at the rate of eight per centum per annum, to wit, the sum of two hundred and thirty-five $\frac{72}{100}$ dollars for the forbearance and giving day of payment for the said sum of twelve thousand eight hundred and ninety-two $\frac{92}{100}$ dollars for the said term of sixty days and no longer; and that the said John F. Darby should make and execute his certain promissory negoti-
31 able note, dated upon said fifteenth day of October, A. D. 1868, for said sum of twelve thousand eight hundred and ninety-two $\frac{92}{100}$ dollars, payable sixty days after said date, and to his own order. And plaintiffs aver that the said John F. Darby did, thereupon, execute his said promissory note for said sum as above described, and the defendants thereupon loaned said Darby the said sum, and the said Darby did, thereupon, yield and pay to the said defendants, unlawfully & cor-

ruptly, the said sum of two hundred and thirty-five $\frac{70}{100}$ dollars, for the forbearance and giving day of payment for said term of sixty days, and no longer, for said sum of twelve thousand eight hundred and ninety-two $\frac{92}{100}$ dollars in advance, and the defendants did, corruptly and unlawfully, receive the same. And plaintiffs further aver that, thereafter, to-wit, upon the seventeenth day of December, A. D. 1868, the said John F. Darby, in pursuance of said corrupt and unlawful agreement did pay, and the defendants did receive, the said principal sum of twelve thousand eight hundred and ninety-two $\frac{92}{100}$ dollars so loaned as aforesaid. And the plaintiffs aver that, at the time of making said corrupt and unlawful agreement, as well as at the time of receiving said sums of money paid in pursuance thereof, the defendants were, by act of Congress of the United States aforesaid, allowed to take & receive, reserve and charge on every loan or discount made, interest at the rate
32 allowed by the laws of the State where said bank was located, and no more, except that where, by the laws of any State, a different rate was limited for banks of issue organized under State laws, the rate so limited should be allowed for associations organized under said act of Congress in such State. And plaintiffs further aver that, at said times, the banks of issue organized under the laws of the said State of Missouri were, by law, limited to the taking, receiving, & charging interest at the rate of eight per centum per annum, and no more; notwithstanding which, said defendants, though so limited at the times set forth, received the said sum as interest, to wit, on the said 15 day of October, A. D. 1868, two hundred thirty-five & $\frac{70}{100}$ dollars as above set forth, according to the terms of said corrupt and unlawful agreement made for the forbearance and giving day of payment for the said sum of twelve thousand and eight hundred ninety-two $\frac{92}{100}$ dollars for said term of sixty days, and no longer, or interest at a greater rate than eight per centum per annum as aforesaid: all which was against the act of Congress of the United States, approved June 3d, 1864, aforesaid. And the plaintiffs further aver that said unlawful transactions occurred within two years next preceeding the filing of this their declaration.

By means whereof the said defendants have forfeited and ought
33 to pay twice the amount of interest by the said John F. Darby to them so paid, to wit, twice the sum of two hundred and thirty-five $\frac{70}{100}$ dollars, or four hundred and seventy-one and forty one-hundre'ths dollars, by him paid & them received on said fifteenth day of October, A. D. 1868, to the use of the plaintiffs, who sue for the same, as by said act of Congress provided, and whereof said defendants have had due notice; yet they have never paid the same, though requested, and unjustly detain it.

For that whereas also it was corruptly and unlawfully agreed between the said John F. Darby, and the defendants afterwards, to wit, on the 17th day of December, A. D. 1868, that the said defendants should bargain & loan to the said John F. Darby the further sum of seven thousand eight hundred ninety $\frac{}{100}$ dollars and should allow and give the said John F. Darby day of payment therefor for *for* the space of sixty days next thereafter, and that the said John F. Darby should, at the time of the making of said agreement, corruptly and unlawfully pay said defendants interest at a greater rate than interest at the rate of eight per centum per annum, to wit, the sum of one hundred and forty-four and $\frac{19}{100}$ dollars for the forbearance and giving day of payment for the said sum of seven thousand eight hundred and ninety dollars for the said term of sixty days,
34 and no longer; and that the said John F. Darby should execute

his certain promissory negotiable note and agreement, dated upon said seventeenth day of December, A. D. 1868, for said sum of seventy-eight hundred and ninety $\frac{}{100}$ dollars payable sixty day' after said date, to the order of said defendants, and should deposit with them a certain note of the said John F. Darby, secured by deed of trust upon Main-street property, and with a proviso or power of sale of said collateral security to the defendants, for eight thousand dollars. And plaintiffs aver that the said John F. Darby did, thereupon, in pursuance of said unlawful and corrupt agreement, make and execute his said note and agreement as aforesaid, and did deposit the said collateral security & note & agreement with the defendants, who did thereupon loan said John F. Darby said sum of seventy-eight hundred dollars, and then & there said John F. Darby did yield & corruptly & unlawfully pay said defendants, & said defendants did, corruptly and unlawfully, receive said sum of one hundred and forty-four and $\frac{19}{100}$ dollars as interest for the forbearance and giving day of payment for said term of sixty days, and no longer, for said sum of seventy-eight hundred and ninety dollars in advance. And plaintiffs further aver that, thereafter, to wit, upon the eighteenth day of February, A. D. 1869, the said John F. Darby, in pursuance of said corrupt and unlawful agreement, did pay and
35 the defendants did receive the said principal sum of seven thousand and eight hundred and ninety dollars so loaned as aforesaid. And plaintiffs aver that, at the time of making said corrupt and unlawful agreement as well as the time of receiving said sums of money paid in pursuance thereof, the defendants were, by act of Congress of the United States aforesaid, allowed to take & receive, reserve and charge on every loan or discount made, interest at the rate allowed by the laws of the State where said bank was located, and no more, except that where, by the laws of any State a different rate was limited for banks of issue organized under State laws, the rate so limited should be allowed for associations organized under said act of Congress in such State. And plaintiffs further aver that, at said times, the banks of issue organized under the laws of the said State of Missouri were, by law, limited to the taking, receiving, & charging interest at the rate of eight per centum per annum, and no more; notwithstanding which, said defendants though so limited at the times set forth, received the said sum as interest, to wit, on the said seventeenth day of December, A. D. 1868, one hundred and forty-four $\frac{19}{100}$ dollars as above set forth according to the terms of said corrupt and unlawful agreement made for the forbearance and giving day of payment for the said sum of seventy-eight hundred and ninety dollars for said term of sixty days, and no longer,
. or interest at a greater rate than eight per centum per annum
36 as aforesaid: all which was against the act of Congress of the United States, approved June 3d, 1865, aforesaid. And the plaintiffs further aver that said unlawful transactions occurred within two years next preceeding the filing of this their declaration. By means whereof the said defendants have forfeited and ought to pay twice the amount of interest by the said John F. Darby to them so paid, to wit, twice the sum of one hundred and forty-four $\frac{19}{100}$ dollars, or two hundred & eighty-eight $\frac{38}{100}$ dollars, by him paid and them received on said seventeenth day of October, A. D. 1868, to the use of the plaintiffs who sue for the same as by said act of Congress provided, and whereof the defendants have had due notice; yet they have never paid the same, though requested, and unjustly detain it.

For that whereas also it was corruptly and unlawfully agreed between the defendants and the said John F. Darby that the defendants,

afterwards, to wit, on the thirtieth day of December, A. D. 1868, should bargain and loan to the said John F. Darby the further sum of four thousand dollars, and should allow & give the said John F. Darby day of payment therefor for the space of ninety days from said date; and that the said John F. Darby should, at the time of making said agreement, corruptly and unlawfully pay said defendants interest at a greater rate than interest at the rate of eight per centum
37 per annum, to wit, the sum of one hundred and ninety-eight and $\frac{90}{100}$ dollars, for the forbearance and giving day of payment for the said sum of four thousand dollars, for the said term of ninety days, and no longer; and that the said John F. Darby should make and deliver to them his certain promissory note, dated Dec. 30th, 1868, payable to his own order, ninety days after the date thereof, with interest at the rate of ten per centum per annum after maturity, for said sum of four thousand dollars. And plaintiffs aver that the said John F. Darby did thereupon make and execute his said promissory note as afore described, and delivered the same to the defendants, who thereupon advanced and loaned him the said sum of four thousand dollars, and the said Darby did thereupon yield and corruptly pay to the said defendants the said sum of one hundred and ninety-eight $\frac{90}{100}$ dollars, for the forbearance and giving day of payment for said term of ninety days and no longer, for said sum of four thousand dollars in advance, and the defendants did corruptly and unlawfully receive the same. And plaintiffs further aver that, thereafter, to wit, upon the second day of April, 1869, the said John F. Darby, in pursuance of said corrupt and unlawful agreement, did pay, and the defendants did receive, the said principal sum of *of* four thousand dollars, so loaned as aforesaid. And the plaintiffs
38 aver that, at the time of making said corrupt and unlawful agreements, as well as at the time of receiving said sums of money paid in pursuance thereof, the defendants were, by act of Congress of the United States aforesaid, allowed to take & receive, reserve, and charge, on every loan or discount made, interest at the rate allowed by the laws of the State where said bank was located and no more, except that where, by the laws of any State, a different rate was limited for banks of issue organized under State laws, the rate so limited should be allowed for associations organized under said act of Congress in such State. And plaintiffs further aver that, at said times, the banks of issue organized under the laws of the said State of Missouri were, by law, limited to the taking, receiving, & charging interest at the rate of eight per centum per annum and no more: Notwithstanding which, said defendants, though so limited at the times set forth, received the said sum as interest, to wit, on the said thirtieth day of December, A. D. 1868, the said sum of one hundred and ninety-eight $\frac{90}{100}$ dollars, as above set forth, according to the terms of said corrupt and unlawful agreement, made for the forbearance and giving day of payment for the said sum of four thousand dollars for said term of ninety days and no longer, or interest at a greater rate than eight per centum per annum as aforesaid: all which was against the act of Congress of the United States, ap-
39 proved June 3d, 1864, aforesaid. And the plaintiffs further aver that said unlawful transactions occurred within two years next preceeding the filing of this their declaration. By means whereof the said defendants have forfeited, and ought to pay twice the amount of interest by the said John F. Darby to them so paid, to wit, twice the sum of one hundred and ninety-eight $\frac{90}{100}$ dollars, or ($397\frac{80}{100}$) three hundred and ninety-seven $\frac{80}{100}$ dollars, by him paid & them received on said thirtieth day of December, A. D. 1868, to the use of the plaintiffs, who

sue for the same, as by said act of Congress provided, and whereof said defendants have had due notice; yet they have never paid the same, though requested, and unjustly detain it.

For that whereas also it was corruptly and unlawfully agreed between said defendants and said John F. Darby that the defendants, afterwards, to wit, on the sixth day of March, A. D. 1869, should bargain and loan to the said John F. Darby the further sum of five thousand dollars, and should allow & give the said John F. Darby day of payment therefor for the space of ninety days from said date, and that the said John F. Darby should, at the time of making said agreement, corruptly and unlawfully pay said defendants interest at a greater rate than interest at the rate of eight per centum per annum, to wit, the sum of two hundred and ninety-six $\frac{75}{100}$ dollars, for the forbearance and giving
40 day of payment for the said sum of five thousand dollars for the said term of ninety days & no longer; and that the said John F. Darby should make and deliver to them his certain promissory negotiable note, dated upon said six' day of March, A. D. 1869, payable ninety days after said date, to the order of Samuel Knox, and by him endorsed as accommodation endorser, for the said sum of five thousand dollars. And the plaintiffs aver that the said John F. Darby did thereupon make and deliver to the defendants his said note so endorsed, dated & payable as above described, and that said defendants thereupon advanced & loaned said Darby said sum of five thousand , and the said Darby did thereupon yield and corruptly pay, and the said defendants did corruptly & unlawfully receive from him the said sum of two hundred and ninety-six $\frac{75}{100}$ dollars, for the forbearance and giving day of payment of said five thousand dollars for said term of ninety days and no longer. And the plaintiffs aver that, thereafter, to wit, on or about the seventh day of June, A. D. 1869, the said John F. Darby did unlawfully & corruptly pay and said defendants did corruptly & unlawfully receive the said principal sum of five thousand dollars so loaned as aforesaid, in pursuance of said corrupt & unlawful agreement between them made as aforesaid. And the plaintiffs aver that, at the time of making said corrupt and unlawful agreements, as well as at the time of receiving
41 said sums of money paid in pursuance thereof, the defendants were, by act of Congress of the United States, aforesaid, allowed to take, receive, reserve, and charge on every loan or discount made, interest at the rate allowed by the laws of the State where said bank was located, and no more, except that where by the laws of any State, a different rate was limited for banks of issue organized under State laws, the rate so limited should be allowed for associations organized under said act of Congress in such State. And plaintiffs further aver that, at said times the banks of issue organized under the laws of the said State of Missouri, were by law limited to the taking, receiving, and charging interest at the rate of eight per centum per annum, and no more; notwithstanding which, said defendants, though so limited at the times set forth, received the said sum as interest, to wit, on the said sixth day of March, A. D. 1869, the said sum of two hundred and ninety six $\frac{75}{100}$ dollars, as above set forth, according to the terms of said corrput and unlawful agreement made, for the forbearance and giving day of payment for the said sum of five thousand dollars for the said term of ninety days, and no longer, or interest at a greater rate than eight per centum per annum, as aforesaid: all which was against the act of Congress of the United States, approved June 3d, 1864, aforesaid. And
42 the plaintiffs aver that said unlawful transactions occurred within two years next preceeding the filing of this their declaration.

By means whereof the said defendants have forfeited, and ought to pay, twice the amount of interest by the said John F. Darby, to them so paid, to wit, twice the sum of two hundred and ninety-six $\frac{75}{100}$ dollars, or (593.50) five hundred and ninety-six $\frac{50}{100}$ dollars by him paid and them received on said sixth day of March, A. D. 1869, to the use of the plaintiffs who sue for the same, as by said act of Congress provided, and whereof said defendants have had due notice; yet they have never paid the same, though requested, and unjustly detain it.

For that whereas, also, it was corruptly and unlawfully agreed between said defendants and said John F. Darby, that the defendants afterwards, to wit, on the thirteenth (13) day of April, A. D. 1869, should bargain and loan to the said John F. Darby, the further sum of five thousand dollars, and should allow & give the said John F. Darby day of payment therefor for the space of four months from said date, and that the said John F. Darby at the time of making said agreement, corruptly and unlawfully pay said defendants interest at a greater rate than interest at the rate of eight per centum per annum, to wit, the sum of three hundred and twelve $\frac{75}{100}$ dollars for the said term of four months, and no longer, and that the said John F. Darby should make and
43 deliver to them his certain promissory negotiable note, dated upon said thirteenth day of April, A. D. 1869, payable four months after date to his own order, for the said sum of five thousand dollars. And plaintiffs aver that the said John F. Darby did thereupon make and deliver to the defendants his said note as above set forth, and that said defendants thereupon advanced & loaned said Darby said sum of five thousand dollars, and said Darby did thereupon yield and corruptly & unlawfully pay, and said defendants did corruptly & unlawfully receive from him, the said sum of three hundred and twelve $\frac{75}{100}$ dollars, for the forbearance and giving day of payment of said five thousand dollars for said term of four months, and no longer. And the plaintiffs aver that, thereafter, to wit, on or about the thirteenth day of May, A. D. 1869, the said John F. Darby did, corruptly and unlawfully, pay, before said note became due & payable, according to the tenor and purport thereof, and the defendants did receive, the said principal sum of five thousand dollars, but did not refund or abate any part of the said sum by him to them paid as interest as aforesaid. And the plaintiffs aver that, at the time of making said corrupt & unlawful agreement, as well as at the time of receiving said sums, the defendants were, by act of Congress of the United States aforesaid, allowed to take, receive, reserve, and charge, on every loan or discount made, interest at
44 the rate allowed by the laws of the State where said bank was located, and no more, except that where, by the laws of any State a different rate was limited for banks of issue, organized under State laws, the rate so limited should be allowed for associations organized under said act of Congress in such State. And plaintiffs aver that, at the times aforesaid, the banks of issue, organized under the laws of said State of Missouri, were, by law, limited to the taking, receiving, & charging interest at the rate of eight per centum per annum and no more; notwithstanding which, said defendants, though so limited at the times set forth, received the said sum as interest, to wit, on the said thirteenth of April, A. D. 1869, the said sum of three hundred and twelve $\frac{75}{100}$ dollars as above set forth, according to the terms of said corrupt and unlawful agreement made, for the forbearance and giving day of payment for the said sum of five thousand dollars for the said term of four months, and no longer, or interest at a greater rate than interest at eight per centum per annum, as aforesaid; all which was against the

act of Congress of the United States, approved June 3d, 1864, as aforesaid. And the plaintiffs aver that said unlawful transactions occurred within two years next preceeding the filing of this their declaration. By means whereof the said defendants have forfeited, and ought to pay,
45 twice the amount of interest by the said John F. Darby to them so paid, to wit, twice the sum of three hundred and twelve $\frac{75}{100}$ dollars by him paid & them received on the said 13th April, 1869, or six hundred & twenty-five $\frac{50}{100}$ dollars, to the use of the plaintiffs who sue for the same, as by said act of Congress provided, and whereof said defendants have had due notice; but they have never paid the same, though requested, but refuse & unjustly detain it.

Wherefore plaintiffs pray judgement for the sum of fifty thousand dollars.

GLOVER & SHEPLEY,
SAMUEL KNOX,
POLK, CAUSEY & DRAKE,
Attorneys for the Plaintiffs.

And on said 26th day of April, A. D. 1871, there was also filed in the clerk's office of said circuit court the following original summons in this case, which summons is in the words and figures following, to wit:

Summons.

EAST'R' MISSOURI DISTRICTS, *sct:*

The President of the United States of America to the marshal of the eastern district of Missouri, greeting:

You are hereby commanded to summon The National Bank of State of Missouri, that it be and appear before the honorable district court of the United States for the eastern district of Missouri, on the first day of the next term thereof, to be holden at the city
46 of St. Louis, in and for said district, on the third Monday of May, 1870, then and there to answer unto Andrew Park and John K. Tiffany, trustees of the estate and effects of John F. Darby, a bankrupt, in a plea of debt to the damage of said plaintiff of fifty thousand dollars. Hereof fail not, and have you then and there this writ.

Witness the Honorable Samuel Treat, judge of the district court of the United States for the eastern district of Missouri, the 4th day of May, A. D. eighteen hundred and seventy. Issued at office, in the city of St. Louis, under the seal of said district court the day and year last aforesaid.

[SEAL.] BEN. F. HICKMAN, *Clerk.*

Marshal's return.

UNITED STATES OF AMERICA,
Eastern Districts of Missouri, ss:

Executed this writ by reading the summons, together with a copy of declaration thereto attached to *the* James H. Britton, at St. Louis, in said district, May 6, 1870.

C. A. NEWCOMB,
U. S. Marshal E. D. of Mo.
By I. SAUER, *Dep'ty.*

The following is the demurrer filed in the clerk's office of said circuit court with the other original papers in this case, to wit:

UNITED STATES OF AMERICA,
Eastern District of Missouri, sct:

47 *Demurrer.*

In the district court of the United States for the eastern district of Missouri.

ANDREW PARK & JOHN K. TIFFANY, TRUSTEES &c.,
vs.
THE NATIONAL BANK OF THE STATE OF MISSOURI.

Now, at this day, comes the said defendant, The National Bank of the State of Missouri, and demurs to the declaration of the said plaintiffs, and says that the said declaration and the matters and things in the said declaration set forth are not sufficient in law to entitle the said plaintiffs to have and maintain their said action thereof against the said defendant.

And for cause of demurrer herein the said defendant says:

First. As to the matters and things set forth in the first count of the said declaration.

1. That several separate and distinct causes of action are set forth and declared on in the said count.

2. That several of the alleged causes of action by the said plaintiffs, in the said first count of their declaration set forth, accrued more than two years before the institution of this suit.

3. It does not appear from the facts set forth by the plaintiffs in the said first count of their declaration, that this defendant was or is limited to the taking, receiving, and charging on any loan or discount made, interest at the rate of eight per cent. only.

48 Second. And as to the matters and things set forth in the second count of said declaration, defendant says:

1. That several separate and distinct causes of action are joined and set forth in the said count.

2. That several of the alleged causes of action by the said plaintiffs in the second count of said declaration, accrued more than two years before the institution of this suit.

3. It does not appear from the facts set forth by the plaintiffs in the second count of their declaration, that this defendant was or is limited to the taking, receiving, or charging on any loan or discount made interest at the rate of eight per cent. only.

Third. And as to the matters and things set forth in the third count of said declaration, defendant says:

1. That several separate and distinct causes of action are joined and set forth in the same count.

2. That several of the said alleged causes of action accrued more than two years before the commencement of this suit.

3. It does not appear from the facts set forth by plaintiffs in the said third count of their declaration, that this defendant was or is limited to the taking, receiving, or charging on any loan or discount made interest at the rate of eight per cent. only.

49 Fourth. It does not appear from the facts set forth in the fourth count of said declaration, that this defendant was or is limited to the taking, receiving, or charging on any loan or discount made interest at the rate of eight per cent. only.

Fifth. And as to the fifth, sixth, seventh, eighth, and ninth counts of said declaration and the matters and things set forth and alleged, they do not show that the defendant was or is limited to the taking, receiving, or charging on any loan or discount made interest at the rate of eight per cent. only, nor is this defendant so limited by law to the taking or charging on any loan or discount made eight per cent. only.

Sixth. The said declaration is in other respects informal and insufficient.

SHARP & BROADHEAD,
Att'ys for Def't.

The following is the plea filed in the clerk's office of said circuit court with the other original papers in this case, to wit:

Plea.

In the district court of the United States for the eastern district of Missouri.

ANDREW PARK AND JOHN K. TIFFANY, PL'FFS,
vs.
THE NATIONAL BANK OF THE STATE OF MISSOURI, def't.

And the said defendant comes & defends the wrong & injury, when, &c.; and as to the fourth, fifth, sixth, seventh, eighth, and ninth
50 counts of said declaration, says that it does not owe the said sums of money in the said several counts of said declaration demanded of said defendant, nor either of them, nor any part thereof, in manner and form as the said plaintiffs have thereof above complained against said defendant. And of this defendant puts itself upon the country.

SHARP & BROADHEAD,
Att'ys for Def't.

Similiter.

As to the said pleas of the said defendant by him above pleaded, and whereof it has put itself upon the country, the plaintiffs do the like.

S. KNOX, with
GLOVER & SHEPLEY, and
POLK, CAUSEY & DRAKE,
For Pl'ffs.

And afterwards, at a regular stated term of said circuit court of the United States for the districts of Missouri, begun and holden at the city of St. Louis, in and for said districts, on the first Monday of October, A. D. 1871, the following proceedings were had in this case on Friday, the 20th day of October, in said last-mentioned year, to wit:

Case submitted and taken under advisement.

JOHN K. TIFFANY, SURVIVING TRUSTEE, &C., plaintiff, *vs.* THE NATIONAL BANK OF THE STATE OF MISSOURI, defendant. } Transferred from United States district court, eastern district of Missouri.

This day come the parties, by their respective attorneys, and thereupon the case is submitted to the court, by said attorneys, upon
51 the pleadings herein as transferred from the district court of the United States for the eastern district of Missouri; and the court, not being fully advised of and concerning the premises, takes further time to consider thereof.

And afterwards, at the April term of said circuit court, A. D. 1872, the following further proceedings were had in this case on Tuesday, the 23d day of April, in said last-mentioned year, to wit:

Discontinued as to part of declaration.

JOHN K. TIFFANY, SURVIVING TRUSTEE, &C., plaintiff, *vs.* THE NATIONAL BANK OF THE STATE OF MISSOURI, defendant. } Transferred from U. S. district court, east. dist. Missouri.

This day comes the plaintiff, by his attorney, Samuel Knox, esquire, and also comes the defendant, by its attorney, James O. Broadhead, esquire, and, on motion of said attorney for plaintiff, this case is discontinued as to the fourth, fifth, sixth, seventh, eighth, and ninth counts of the plaintiff's declaration herein.

Demurrer sustained.

And the court, having examined the questions of law arising upon the demurrer of the defendant to said declaration, and being fully advised in the premises, is of opinion that the law upon said demurrer, as far as the same relates to the first, second, and third counts of said declaration, is for the defendant, and, in accordance with such opinion, now orders that said demurrer be, and the same is now hereby, sus-
52 tained as to said first, second, and third counts. And said plaintiff, electing to abide by his said declaration, and failing and refusing to amend the same further, said defendant asks that the judgment of the court be entered on the pleadings herein; and the court, being of opinion that said declaration is insufficient in law:

Judgment.

It is, therefore, now considered by the court that the plaintiff, John K. Tiffany, surviving trustee in bankruptcy of John F. Darby, bankrupt, take nothing by his writ herein; and that the defendant, The National Bank of the State of Missouri, go hence without day, and recover against said plaintiff the costs in this behalf expended, and that execution or a fee-bill be issued therefor.

And afterwards, at said last-mentioned term of said circuit court, begun and holden as aforesaid, the following further proceedings were had in this case on Thursday, the 2d day of May, in said year, to wit:

Writ of error allowed.—Bond filed and approved.

JOHN K. TIFFANY, SURVIVING TRUSTEE, &C., plaintiff,
vs.
THE NATIONAL BANK OF THE STATE OF MISSOURI, defendant.

Transferred from United States district court eastern district of Missouri.

This day comes the plaintiff, by his attorney, and presents his bond herein, which is approved by the court, and ordered to be made part of the record, a writ of error having been this day allowed to the Supreme Court of the United States in this case.

The bond filed as aforesaid is in the words and figures following, to wit:

53 *Bond.*

Know all men by these presents that I, John K. Tiffany, am held and firmly bound unto the National Bank of the State of Missouri, in the full and just sum of five hundred dollars, to be paid to the said National Bank of the State of Missouri, or assigns; to which payment, well and truly to be made, I bind myself, my heirs, executors, and administrators, by these presents, sealed with my seal, and dated this second day of May, in the year of our Lord one thousand eight hundred and seventy-two.

Whereas, lately, at the April term A. D. 1872, of the circuit court of the United States for the districts of Missouri, in a suit depending in said court, between John K. Tiffany, surviving trustee of the estate of John F. Darby, bankrupt, plaintiff, and the National Bank of the State of Missouri, defendant, judgment was rendered against the said John K. Tiffany, surviving trustee as aforesaid, and the said John K. Tiffany, surviving trustee as aforesaid, having obtained a writ of error of the said court to reverse the judgment in the aforesaid suit, and a citation directed to the said National Bank of the State of Missouri, citing and admonishing it to be and appear at a Supreme Court of the United States, to be holden at Washington the first Monday of December next:

Now, the condition of the above obligation is such, that if the
54 said John K. Tiffany, surviving trustee as aforesaid, shall prosecute said writ to effect, and answer all damages and costs if he fail to make good his plea, then the above obligation to be void; else to remain in full force and virtue.

JNO. K. TIFFANY. [SEAL.]

Sealed and delivered in presence of—
Approved by consent of parties by me.

JNO. F. DILLON, *Judge.*

55 *Clerk's certificate.*

UNITED STATES OF AMERICA,
Circuit Court for the Districts of Missouri, ss:

I, Austin Drake, clerk of the circuit court of the United States in and for the districts of Missouri, do hereby certify the writing hereto annexed to be a transcript of the record and proceedings in case of John K.

Tiffany, surviving trustee, &c., plaintiffs, against The National Bank of the State of Missouri, defendant, as fully as the same remain on file and of record in said case, in my office.

In witness whereof I hereunto subscribe my name and affix the seal of said court, at office in the city of St. Louis, in said districts, this ninth day of May, in the year of our Lord eighteen hundred and seventy-two.

[SEAL.] AUSTIN DRAKE,
Clerk of said Court.

56 (Indorsed:) United States circuit court, districts of Missouri. John K. Tiffany, surviving trustee, &c., plaintiff, against The National Bank of the State of Missouri, defendant. Duly certified transcript of the record and proceedings in the above-entitled cause.

56½ UNITED STATES OF AMERICA, *ss:*

[SEAL.] The President of the United States to the judges of the circuit court of the United States for the districts of Missouri, greeting:

Because, in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said district court, before you, at the April term, 1872, thereof, between John K. Tiffany, surviving trustee of the estate of John F. Darby, bankrupt, plaintiff, and The National Bank of the State of Missouri, defendant, a manifest error hath happened, to the great damage of the said John K. Tiffany, surviving trustee as aforesaid, as by his complaint appears:

We, being willing that error, if any there hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, D. C., on the first Monday of December next, in the said supreme court, to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right and according to the laws and customs of the United States, should be done.

Witness the Honorable Salmon P. Chase, chief justice of the Supreme Court of the United States, this second day of May, in the year of our Lord one thousand eight hundred and seventy-two.

Issued at office in the city of St. Louis, with the seal of the circuit court of the United States for the districts of Missouri, dated as aforesaid.

AUSTIN DRAKE,
Clerk C. C. U. S., Missouri Districts.

Allowed by—

JNO. F. DILLON, *Judge.*

57 UNITED STATES OF AMERICA,
Districts of Missouri, ss:

In obedience to the within writ, I herewith transmit a transcript of the record and proceedings of the within entitled case to the Supreme Court of the United States.

Witness my hand at office, in the city of Saint Louis, in said districts, this twenty-fifth day of March, A. D. 1872.

AUSTIN DRAKE,
Clerk of the Circuit Court of the United States, Districts of Mo.

(Indorsed:) United States circuit court, districts of Missouri. John K. Tiffany, surviving trustee, &c., vs. National Bank State of Mo. Writ of error to the circuit court of the United States for the districts of Missouri. Returned and filed, 187 . , clerk.

58 The United States of America to the National Bank of the State of Missouri, greeting:

You are hereby cited and admonished to be and appear at a supreme court of the United States to be holden at Washington, D. C., on the first Monday of December next, pursuant to a writ of error, filed in the clerk's office of the circuit court of the United States for the districts of Missouri, wherein John K. Tiffany, surviving trustee of the estate of John F. Darby, bankrupt, is plaintiff in error, and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the honorable , judge of the circuit court of the United States for the districts of Missouri, this second day of May, in the year of our Lord one thousand eight hundred and seventy-two.

JNO. F. DILLON,
Judge United States Circuit Court, Districts of Missouri.

59 Service of the within citation acknowledged this 25th day of May, A. D. 1872.

SHARP & BROADHEAD,
Att'ys for Def't in Error.

(Indorsed:) United States circuit court, districts of Missouri. John K. Tiffany, surviving trustee, &c., vs. National Bank State Mo. Citation. Filed, 187 . , clerk.

(Indorsement on cover:) No. 393. John K. Tiffany, surviving trustee of the estate of John F. Darby, bankrupt, plaintiff in error, vs. The National Bank of the State of Missouri. Missouri C. C. U. S. Filed 13th June, 1872.

JOHN K. TIFFANY, SURVIVING TRUSTEE OF JOHN F. DARBY, PLAINTIFF IN ERROR,

vs.

THE NATIONAL BANK OF THE STATE OF MISSOURI, DEFENDANT IN ERROR.

UNITED STATES SUPREME COURT.

Statement of Case, Points, Brief and Argument of Plaintiff in Error.

JOHN K. TIFFANY, SURVIVING TRUSTEE of the estate of John F. Darby, bankrupt, plaintiff in error,
vs.
THE NATIONAL BANK OF THE STATE OF MISSOURI.

United States Supreme Court, October Term, 1873.

This is an action brought to recover double the amount of interest paid by the bankrupt to the defendant, a corporation organized in the State of Missouri, under the act of Congress, approved June 3, 1864, entitled "an act to provide a national currency," &c. See chap. 106, sec. 30, page 108.

In the declaration in this case it is averred that the interest paid by Darby to the defendant for *money loaned* was a greater interest than the defendant could lawfully receive, by reason of which plaintiff has a right to recover double the amount of interest so *paid* within two years next prior to the institution of this suit.

Defendant demurred to plaintiff's declaration. The grounds of demurrer as assigned are, first, "that several causes of action are set forth and declared on in one count." Second, that some of the "causes of action accrued more than two years before the institution of this suit." Third, that it does not appear that defendant was limited to the taking of interest at the rate of eight per cent. only.

The demurrer was sustained only on the ground that the defendant was authorized to take interest at the rate of ten per cent., and was not limited to eight per cent.

It is of great importance that this point be especially decided by this court, as other cases depend upon the decision of this question.

The question presented to the court is the construction of so much of said act of Congress as prescribes the rate of interest for banks organ-

ized under it. The act provides that said banks shall be "*allowed* to take, receive, reserve and charge, on any loan or discount made, interest at the rate *allowed* by the laws of the State where such bank is located and no more, *except that where*, by the laws of any State, a different rate is limited for banks of issue organized under State laws, the rate so limited shall be *allowed* to associations organized under said act of Congress in said State." See act approved June, 1864, chap. 106, sec. 30, page 108.

In plaintiff's declaration it is alleged that when the contracts therein set forth were made, and when the interest thereon was paid, the banks of issue in the State of Missouri existing under the laws of said State were limited in the rate of interest to be charged by them, to eight per cent. per annum.

If the defendant were limited to the rate of interest that banks of issue created by the laws of Missouri are limited, then the court erred in sustaining the demurrer in this case.

There is nothing in said act itself indicating any purpose to discriminate against State banks or against the policy of the States as manifested in the laws regulating interest. On the contrary, there is a manifest purpose to conform IN ALL RESPECTS to State policy; to put the national banks on precisely the same footing, with the same limit in the matter of interest as the State banks. The plain object of said act was not to stir up opposition in any State where national banks might be organized, on the part of managers and stockholders of State institutions, but to subject such national banks to such restrictions as would not excite hostility to these banks, or to the government by whose authority they were organized.

It being well known that almost all of the States regulated by law the rate of interest to be charged, and that it was usual to fix a *less rate for banks of issue* than is prescribed to individuals, Congress wisely and prudently adopted the policy of the States where the national banks might be organized, thus seeking to overcome prejudice and secure favor for the law to which great opposition was feared, by placing the national banks under the same restrictions as to interest as the State banks. The most of the time since the State of Missouri was admitted to the Union the highest rate of interest for banks of issue was six per cent.

It is further apparent that Congress had full faith in laws regulating the rate of interest. This act provides for three separate and distinct state of facts. In the first place, it provides for interest at the rate of seven per cent. per annum when there is no limit to the rate of interest fixed by the State laws. In the second place, where there are no banks of issue and the State law provides a rate of interest for all persons; this rate is the rate, and no other, which the national banks can charge, then when the law prescribes a limit to the banks of issue in a State, then that is the limit for the national banks. Any other construction of the act does great violence to its obvious meaning, as well as injustice to the Congress that passed it.

A well recognized rule of interpretation is contained in the maxim, "Expressio unius exclusio alterius." Apply this maxim in this case: "Except that where by the laws of any State a different rate is limited for banks of issue organized under State laws, the rate so limited shall be *allowed* for associations organized under this act in such State." The court will perceive that the law "excepts" from the clause, interest allowed by the laws of the State where the bank is located, banks located in a State where banks of issue exist, and in such cases allows, in the sense of *prescribes* and *limits*, the rate to be charged to the rate allowed for banks of issue.

The words "and no more" add nothing to the certainty of the act. Suppose these words had been omitted, this court would not hold that the bank had any other power than it has now. The expression of the one rate "allowed to banks of issue in the State" is to be allowed, excludes the idea that any other or different rate is to be allowed to the national banks.

Suppose said act of Congress had provided that the national banks should be "allowed" to take eight per cent. for money loaned, would not this *limit* the banks' power to eight per cent. Again, suppose said act had provided that banks organized under it in States where there were banks of issue, and a rate of interest prescribed by law to such banks, the National banks should be *allowed* to charge the same rate of interest as the State banks of issue were *allowed* to take, would there be any doubt that the National and State banks were limited to the same rate of interest? The word "allowed" is used in the whole section un-

der consideration as limiting and prescribing the rate of interest. It is thus seen that the words "and no more" which defendant's counsel *imagine* and contend have great potency, are very harmless, unmeaning words; that the act must receive the same construction whether the words be *omitted* or not. By any rule of interpretation known to the law, the national banks in the State of Missouri are allowed to *take*, or to express the legal meaning more forcibly, are *prohibited from taking* a higher rate of interest than the banks of issue in the State. That is to say, they can take eight per cent. per annum "*and no more.*"

But again, by the clause under consideration, the act of Congress, where it empowers banks organized under it, to take the rate of interest *allowed* by the States where they are organized, gave full authority to such banks to charge any rate of interest *allowed* by *law*. It matters not, so far as this clause is concerned, whether the rate of interest *allowed* was *allowed* to an individual, a corporation or a *State bank*. The highest rate of interest *allowed by law* to anybody, any interest that was not positively *unlawful*, could be charged by the national banks. It is thus again demonstratively manifest that when the subsequent clause was *added* by which the rate of interest *allowed* to State banks was *allowed* to national banks, that this clause was for the purpose of limiting and restricting, and not enlarging the power of national banks in the matter of interest. 22 Ohio State Rep 508, 513 50 N.Y. 5 et ful,

So whether we consider the question of the reasonableness of limiting the rate of interest to be taken by National banks to the rate charged by State banks of issue, the probability that Congress would not seek to override well-established State policy in the matter of interest, the injustice of discriminating against State banks of issue in this respect, the hostility that such an object would arouse as well as the interpretation of the act by well-recognized rules of interpretation, and an entire inability to give any force or meaning to the clause allowing the same rate of interest to National as to State banks of issue, unless by way of restricting the power of National banks; it is evident that the court most manifestly erred in sustaining the demurrer in this case.

As above stated, the demurrer was sustained solely on the ground and for the reasons above considered and discussed.

Two other causes of demurrer are assigned; one, that the declaration does not allege that the cause of action accrued within two years next before the institution of this suit; the other, that separate and distinct causes of action are joined and set forth in a single count.

As to the first cause, the declaration shows that in each count it is alleged that the cause of action accrued within two years. The other cause is based upon the idea that there should be a separate count for the amount of interest paid at several times on the same loan or contract.

This is best illustrated by reference to the third count in the declaration on page 9 of the printed record, folio 21–22. The sum loaned is $50,000, the time six months; as evidence of the loan two promissory notes were given, both bearing date February 25th, 1868, and both payable six months after date, and both bearing interest at the rate of 10 per cent. per annum, *after maturity*, and both secured by the same deed of trust on real estate. The rate of discount was 10 per cent. per annum; the loan was not paid at maturity, but was extended at maturity for three months at the same rate of interest, 10 per cent. per annum. In the declaration it is averred that by way of discount for said sum of $50.000, for the period of six months, Darby paid the defendant the sum of $2,569.42, at the date of the loan. In the declaration it is further averred that at the expiration of said six months, to wit, on the 28th day of August, the loan was extended for the period of three months; in further extension of said loan of $50,000 for three months, Darby paid and the defendant received the sum of $1,250. The court will thus perceive that the defendant loaned Darby, on the 25th day of February, 1868, $50,000 for six months at the rate of 10 per cent. per annum; at the end of six months the loan of $50,000 was extended for three months longer; that the discount paid February 25, 1868, the date of the loan, was $2,569.42, and the discount paid for the extension of the loan, on the 28th day of August, 1868, was $1,250, making the sum of $3,819.42 *interest paid* on the *loan* of $50,000 for nine months.

Now it is evident that there was but *one loan*, one *contract to loan*. The loan was for $50,000, first for six months, then extended three months. The rate of interest the same for the whole period; the amount of interest in all received for the use of $50,000 for nine months was

$3,819.42; the rate of interest contracted for and paid was ten per cent. per annum on the *amount loaned* for the period of nine months. The material allegations in the declaration are the amount loaned, when the amount was paid, and the *amount* of interest paid for the sum loaned. If the loan were for $50,000, if it was outstanding and unpaid for nine months, the rate of interest paid was over eight per cent., and the rate that the bank had the right to charge and receive was limited to eight per cent.; then the plaintiff had the right to recover double the amount of interest paid to the defendant.

The court will please observe that the notes bear interest after maturity at the rate of 10 per cent. per annum.

A declaration stating the limit fixed by law to the defendant averring the date and amount of the loan, the time the money loaned was paid, that the amount of interest paid was greater than the legal limit (8 per cent. in this case), *the whole amount of interest paid for said loan* would have been good and sufficient. The fact that the interest on the loan was paid at various times does not compel the plaintiff to set forth, in various and separate counts, the times of payment or the amount paid at various times. The right to recover is for double the amount *of interest paid for the use of the money from the date of the loan to the day of payment.* The averring in the declaration the day on which several payments were made does not make the causes of action separate and distinct. Particularity in this respect does not make *one loan*, several loans, nor does it in any wise prejudice or *effect* plaintiff's remedy.

Then again, this is a suit for interest paid. If on the *final payment of the note*, the whole amount paid by Darby and received by defendant was only $50,000 and interest on that sum at the rate of eight per cent. per annum, would there have been any right of action against the defendant for *money paid*, money *paid as interest in excess of the limit prescribed by law?*

Suppose before the amount loaned was paid, the defendant had availed itself of the space left it for repentance, had abandoned its unlawful purposes and contract, and had canceled the debt on receiving $50,000 with interest at the rate of eight per cent., could this action under a state of facts be maintained?

The demurrer should be over-ruled, so far as the same assigns for cause of demurrer, that several separate and distinct causes of action are joined in one count. If the count contain a good cause of action, it is sufficient.

Chitty Pleadings, 703-4.

11 John's 16, Douglass vs. Satterlee.

The demurrer should have been over-ruled, so far as the same for cause of demurrer assigned that the causes of action occurred more than two years before the institution of the suit.

4 John's 304, Teel vs. Fonda.

3 John's 438, Bennet vs. Hurd.

1 John's 522, Sheldon vs. Clark.

42 Mo., 519, State to me vs. Clark.

24 Conn., 522, State vs. John Miller.

2 East. 340, 362.

2 Saunders on Pleadings, 830.

Then again, the law does not require the institution of a suit, within two years after the cause of action accrued, but within two years after the usurious transaction occurred.

When did the usurious transactions occur?

13 U. S. Statutes, at large, page 108, Sec. 30.

2 Bos. & P. 381-4, Scurry vs. Freeman.

7 Term. Rep. 184-5, Maddock vs. Hammet.

1 Douglas (King's bench) 235, Fisher vs. Beasley.

3 Barnwell & Cresswell, 700 Pearson vs. McGowan.

10 Eng. Com. Law 216, same case.

3 Halsted 233, Clark vs. Badgley.

3 Wilson 261, Lloyd vs. Williams.

7 Mass. Rep. 363-4, Thomas vs. Cleares.

10 Mass. Rep. 121, Chadbourne vs. Watts.

15 Mass. Rep. 436, Simpson vs. Warren.

8 East 374, Williams vs. Hedley.

The Statute of 12th Ann. under which the English cases cited

were made imposed a forfeiture of the *treble* value of the money lent. The whole penalty was incurred; the tranaction which gave the right to recover the full penalty occurred whenever the borrower paid to the lender one farthing more than the legal interest. In our statute it is very different

In the the case of Scurry vs. Freeman, 2 B. & P. 381-2.

Defendant lent one Hooley, five hundred pound. At the time of the loan, it was agreed that the latter should give something more than legal interest as a compensation, but no particular sum was specified. After the execution of the deed Hooley gave Freeman fifty pounds and paid interest at the rate of five pounds per cent. on the five hundred for five years, at the end of which time an action was brought against Freeman for usury. Held that the action was not barred by lapse of time.

In the case of Fisher vs. Beasley Doggs, 135, it was held; If a sum of money is lent upon an agreement to pay legal interest, and a premium over and above is paid when the money is advanced such premium of itself not exceeding the legal interest the security is void but the penalty is not incurred until more than the legal interest is actually received.

In the case of Maddock vs. Hammet, it is said: "The offence of usury is not complete until the lender has actually received the excess of interest in money or moneys worth." 7 T. R. 184-5.

In the case of Clark vs. Badgly, the court held that the lender did not subject himself to the penalty unless he takes, receives or excepts more than the legal interest. 3 Halsted 233.

In the case of Thomas vs. Clewes, the borrower conveyed land of the value of $1,600 for the consideration of $350, the lender agreeing to receive a payment of $522 97 in two installments, the last within three years from the date of the contract. It was held that the lender was not liable for the penalty as long as no part of the $522 97, was paid. 7 Mass 363-4.

In the case of Simpson vs. Warren, the lender receives the borrowers note for $400, payable at a day certain and delivers him the amount secured by the note, deducting interest for the time the

note has to run, at the rate of two per cent. per month, on the $400. It was held that the lender had not incurred the penalty prescribed by the statute so long as the note for $400 remained unpaid. 15 Mass. 436.

In 7th Met. 527-8, Stevens vs. Lincoln, the court says: "While the usurious interest is unpaid, there remains the *locus pemtentiæ*" this was in a case where three-fourths of all the debt, including the usurious interest had been paid and a check given for the balance.

By reference to the Statute it will be seen that "twice the amount *thus paid*" may be recovered back by an action of debt to be "commenced within two years from the time the usurious transactions occurred." The words "thus paid" must refer to the whole amount of interest paid on the loan. The transaction referred to is the money paid as interest. This transaction did not occur, was not terminated until November 3d, 1868.

It is apparent from the declaration, that on the 25th day of Febuary, 1868, that defendant agreed to loan Darby for six months, $50,000. That in fact Darby only received $47,430.58, and defendant reserved $2,569.42. At the expiration of six months, on the 28th day of August, 1868, Darby paid $1,250, and defendant extended the loan for three months. On the 3d day of November, 1868, Darby paid defendant $50,000. The transaction *then* occured, it was then complefed. Darby had the use of $47,430.58 for a little less than nine months. Darby paid for money received by him of the defendant with interest, $51,250. $1,250 of this amount being paid on the 28th day of August, 1868, and $50,000 on said 3d day of November. Darby had paid no money which the defendant had not a legal right to receive until November. Then Darby could not have maintained any action for money paid until November. When the $1,250 was paid the $50,000 loan was due and defendant had a right to receive the amount. When the transaction occurred, when it terminated, when the whole thing was consummated, then the legal effect of defendants reserving by way of discount at the date of the loan $2,569.42 was to entitle the plaintiff to claim and estop the defendant from denying that $2,569.42 was paid by

Darby and received by defendant on the 25th day of Febuary, 1868.

The reserving by way of discount then does not give the right of action at once to recover the money reserved. Reserving does not imply that money was paid.

9 Peters 399, Bank of U. S. vs. Waggoner.
7 Mass. 362-4, Thorne vs. Cleaves.
15 Mass. 436, Simpson vs. Warren.

But when the amount of the loan is paid including the amount reserved as discount the defendant is precluded from denying that Darby paid it, the amount reserved, at the date of the loan.

Suppose that on the 25th, of February 1868, Darby made the contract with defendant as is alleged in the declaration, secured as is therein stated reserving by way of discount, $2 569 42 suppose that the title to the property conveyed as security had utterly failed, or for some other cause Darby had never paid a dollar for the money borrowed, and defendant had no sucurity that he ever would pay a dollar, and the defendant still held the two notes each for $25,000, under such a state of facts had defendant incurred any penalty to be recovered by action of debt, for money paid? Plainly not, the contract for interest is not the payment of interest; suppose Darby had borrowed $100,000, and agreed to pay interest at the rate of two per cent. per month, at the end of twelve month. The discount at that rate is reserved. Could Darby have maintained an action for money paid the day after the loan.

Again by reference to the statute it will be seen, that "the taking, receiving, reserving or charging" a greater rate of interest than is warranted by law works—"a forfeiture of the entire interest." In case interest has been *paid,* twice the the amouut of the interest paid is recoverable. Twice *what* amount of interest? The fair construction of the statute forces the mind to the conclusion that it is twice the amount of interest paid on the loan or contract, to loan. In the first case the penalty attaches the moment the money is delivered to the borrower, in pursuance of such illegal contract, the entire interest is forfeited. In the next case there can be no re-

covery until the unlawful interest is actually paid. The word transaction, is used as indicating a finished act, the transaction is not done or not finished until the whole amount of interest has been paid.

"Interest is the premium paid for the use of money." The premium paid for the use of the money loaned by defendant, to Darby, February 25th, 1868. Darby had the use of the $47,430 58 from February 25th, to November 3d, 1868. He paid a premium amounting to $3,819 42, for the use of the money loaned for that time. The transaction we complain of is this, payment of interest beyond the rate to which defendant is limited by law, we claim twice the amount paid on the loan money, which amount can not be known until the whole debt is paid.

The argument above presented on the demurrer to the third count of plaintiff's declaration applies with equal force to the demurrer to the first and second counts.

SAMUEL KNOX,
One of Plaintiff's Attorneys.

UNITED STATES SUPREME COURT

In Error to the Circuit Court of the United States for the Districts of Missouri.

JOHN K. TIFFANY,
Surviving Trustee of the estate of John F. Darby, Bankrupt,
Plaintiff in Error,

vs.

THE NATIONAL BANK OF THE STATE OF MISSOURI,
Defendant in Error.

Brief of Defendant in Error.

SHARP & BROADHEAD, Attorneys.

JOHN K. TIFFANY, Surviving Trustee of the estate of John F. Darby, Bankrupt, Plaintiff in Error,

vs.

THE NATIONAL BANK OF THE STATE OF MISSOURI, Defendant in Error.

UNITED STATES SUPREME COURT. In Error to the Circuit Court of the United States for the Districts of Missouri.

BRIEF OF DEFENDANT IN ERROR.

SHARP & BROADHEAD, Attorneys.

This is an action of debt, brought by the plaintiff in error under the provisions of the 30th section of the national banking law, to recover back twice the amount of interest paid by John F. Darby, the bankrupt, on certain loans made by the Bank to him before he was adjudged a bankrupt, upon the ground that the interest reserved and paid was greater than the amount allowed by law, to-wit: greater than at the rate of eight per cent. per annum. The defendant in error is a corporation created under the provisions of the National Banking Law.

The provisions of the 30th section of the law are as follows:

"SECTION 30. That every association may take, receive, reserve and charge on any loans or discounts made, or upon any note, bill of exchange, or other evidence of debt, *interest at the rate allowed by the laws of the State or Territory where the Bank is located, and no more;* except that where, by the laws of any State, a different rate is limited for Banks of issue organized under State

laws, the rate so limited shall be allowed every association organized in any such State under this act. And when no rate is fixed by the laws of the State or Territory, the Bank may take, receive, reserve or charge a rate not exceeding seven per centum, and such interest may be taken in advance, reckoning the days for which the note, bill or other evidence of debt has to run.

"And the knowingly taking, receiving, reserving or charging a rate of interest greater than aforesaid, shall be held and adjudged a forfeiture of the entire interest which the note, bill or other evidence of debt carries with it, or which has been agreed to be paid thereon. And in case a greater rate of interest has been paid, the person or persons paying the same, or their legal representatives, may recover back, in any action of debt, twice the amount of interest thus paid from the association taking or receiving the same; *provided*, that said action is commenced within two years from the time the usurious transactions occur." * * * * * *

The declaration in the case contained nine counts; the defendant demurred to the declaration; the plaintiff discontinued his action as to the fourth, fifth, sixth, seventh, eighth and ninth counts of the declaration; the demurrer was sustained as to the first, second and third counts; and judgment went upon the demurrer in favor of the defendant.

The first count charges a loan by the Bank to John F. Darby on the fifth day of May, 1866, of $25,000, for three years, at nine per cent., making an aggregate amount of $6,750. Averring that by the laws of the State of Missouri, where said Bank was located, the banks of issue organized under said laws, were limited to the taking, receiving and charging interest at the rate of eight per cent. per annum, and no more; that this amount of interest, $6,750, was paid by Darby and received by the

Bank; and asking judgment for $13,500, being twice the amount so charged and received.

The second count charges a loan to John F. Darby, on the second day of January, 1868, of $25,000, for sixty days, which was renewed for six months, and which was again renewed for three months; that the rate of interest charged and received was more than eight per cent.; that the amount received for sixty days was $533 34; that the amount charged and received for six months was $1,250; and that the amount charged and received for three months was $625; and plaintiff asks judgment for the aggregate amount of $4,816 68.

The third count charges that on the twenty-fifth day of February, A. D. 1868, the defendant loaned to John F. Darby the sum of $50,000, for the period of six months, at the rate of ten per cent. per annum; and that on the twenty-fifth day of August, A. D. 1868, the said loan was renewed for the period of three months, at the rate of ten per cent. per annum, which interest was paid to and received by defendant; and plaintiff asks judgment for twice the amount of both sums ($7,500).

The averment in each count is that the contract between defendant and Darby was that Darby should pay more interest for the loan than interest at the rate of eight per cent. per annum, and that at the time of making said loan the Banks of issue, organized under the laws of the State of Missouri, were by law limited to the taking, receiving, reserving and charging interest at the rate of eight per cent. per annum, and no more.

The question raised by the demurrer is as to whether the defendant is authorized to charge more than eight per cent. on loans and discounts. The charge is that the defendant did charge and receive more than eight per cent.; and the averment is that Banks of issue, organized under the laws of Missouri, were limited to the

taking, reserving and charging interest at the rate of eight per cent. per annum, and no more.

It is admitted that the general rate of interest allowed by law to all persons is ten per cent. per annum; that is, parties may make a legitimate contract for the payment of that amount of interest; and the demurrer admits that Banks of issue in Missouri are limited to interest at the rate of eight per cent.; in other words, the Banks of issue, organized under the State laws, are *limited to eight per cent.*, but the rate of interest *allowed* by the laws of the State generally *is ten per cent.*

The 30th section of the National Banking Law says "that associations may take, receive, reserve and charge interest at the rate *allowed* by the laws of the State or Territory where the Bank is located, and *no more; except* that where, by the laws of any State, a different rate is *limited* for Banks of issue, organized under State laws, the rates so limited shall be *allowed* for associations organized in any such State under this act." And the section provides further, "that in case a greater rate of interest has been paid, the person or persons paying the same, or their legal representatives, may recover back, in any action of debt, twice the amount of interest thus paid, from the association taking or receiving the same."

The rate of interest allowed by the laws of Missouri being *ten per cent.*, the National Banks located in Missouri are *allowed* to reserve or charge *ten* per cent., *except* that where a different rate is limited for Banks of issue, organized under State laws, the rate so *limited* shall be allowed to National Banks.

No more, then, than ten per cent. is to be allowed, unless or except State Banks are allowed more; otherwise, the same rate is allowed as is allowed generally by the laws of the State where the Bank is located.

It is claimed that the rate *limited* to the State Banks of issue is, by the last subdivision of the clause in question, the *only* rate *allowed* to National Banks, but the statute does not say so. If it had said, as in the preceding clause, that it should be rate allowed, and *no more*, then the National Banks would be limited to that amount. But the limitation is not applied to the National Banks; the law refers to the *limitations* or the rate limited to the State Banks, and declares that rate so limited to the State Banks shall be *allowed* to the National Banks, and an allowance of a greater rate than is permitted by the general law of the State; otherwise the words "*no more*" have no meaning.

If the statute had declared that the National Banks should charge *no more* than the State Banks, or that they should be limited to the rate allowed to the State Banks, the proposition contended for would be clear; but, instead of so declaring, it allows them to charge more than the regular rate whenever the State Banks are limited to more than is allowed by the general law. There is no prohibition upon the National Banks to charge more than the State Banks are allowed, the only prohibition is in regard to the general rate of interest allowed by the State.

The rule is this, as clearly stated by Justice Miller, in delivering the opinion of the Court below:

"If there is no rate of interest fixed in the State, the rate of interest, as allowed to the Banks, is seven per cent.; if there is a general rate of interest beyond that allowed to the community at large—to anybody and everybody—the Banks are at liberty to take that interest as much as anybody is allowed to take it; if there is a rate of interest allowed to the Banks of the State over and above that allowed to private individuals, they are allowed to take that."

The general rate of interest established in the State is ten per cent.; the National Banks are allowed to charge this rate and no more, with an exception. What is that exception? It is that when the laws of the State or Territory allow local Banks to take more, they are allowed to take all that the State Banks are allowed to take; with any other construction, the words "no more" and "except" would have no meaning.

It would have been very easy to say that when the Banks of the State are *limited* below the regular rate of interest allowed by law, the National Banks shall be limited also to that amount

The object of all the legislation of Congress on the subject was to foster and sustain the National Banks, and especially in their relation to the State Banks. The State Banks were taxed out of existence. A duty was imposed on the Bills of the State Banks that were put in circulation, while no such duty was imposed on the Bills of the National Banks.

It was held by this Court in the case of Veazie Bank vs. Fenno, 8 Wallace, that these National Banks were established for the purpose of providing a currency for the whole country, and with this view it has obviously been the purpose of Congress to give the National Banks advantages over the State Banks.

The question before the Court is one simply of statutory construction, and the construction contended for by the defendant in error is aided by the light thrown upon it by the spirit of the legislation of Congress on that subject.

SHARP & BROADHEAD,

Attorneys for Defendant.

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~587~~ 2888

EUGENE S. EUNSON AND JACOB LAGOWITZ, PLAINTIFFS IN ERROR,

vs.

NORMAN W. DODGE, T. BENJAMIN MEIGS, AND WILLIAM E. DODGE.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

FILED DECEMBER 14, 1871.

SUPREME COURT OF THE UNITED STATES.

No. 537.

EUGENE S. EUNSON AND JACOB LAGOWITZ, PLAINTIFFS IN ERROR,

vs.

NORMAN W. DODGE, T. BENJAMIN MEIGS, AND WILLIAM E. DODGE.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

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a UNITED STATES OF AMERICA,
Southern District of New York:

I, Kenneth G. White, clerk of the circuit court of the United States of America, for the southern district of New York, in the second circuit, do hereby certify that the foregoing pages, numbered from one to , inclusive, contain a true and complete transcript of the record and proceedings had in said court in the case of Eugene S. Eunson & al., complainants, ag. Norman W. Dodge, & al., defendants, as the same remain of record and on file in said office.

In testimony whereof, I have caused the seal of the said court to be hereunto affixed at the city of New York in the southern district of New York, in the second circuit, this 5th day of December,
b in the year of our Lord one thousand eight hundred and seventy-one, and of the Independence of the said United States the ninety-sixth.

[SEAL.] KENNETH G. WHITE, *Clerk.*

[5-ct. int. rev. stamp canceled.]

1 To the honorable the justices of the circuit court of the United States for the second circuit within and for the southern district of New York, in equity:

Eugene S. Eunson, of the city & county & State of New York, and Jacob Lagowitz, of the city of Newark, county of Essex, State of New Jersey, citizens of the United States, bring this their bill against Norman W. Dodge, F. Benjamin Meigs, and William E. Dodge, of the city of New York, county of New York & State of New York.

And thereupon your orators complain and say that, heretofore, and before the twenty-third of May, 1854, the said John Myers and one Robert G. Eunson, being then citizens of the United States, were the true, original and first inventors or discoverers of a certain new and useful invention, to wit, an improved machine for sawing thin boards, &c.; and that the said invention was not known or used by others before their invention or discovery thereof; and was not, at the time of the application for letters-patent therefor, in public use or on sale with the consent or allowance of the said Myers and said Robert *E.* Eunson, as the inventors or discoverers thereof, contrary to the provisions of the statutes of the United States in such case made and provided.

That, being such inventors, *and* said Robert G. Eunson, made application in writing to the Commissioner of Patents of the United States for the granting of letters-patent for said invention, and accompanied the same with a written description of said invention or discovery, and the manner and process of making and using the same, in such full, clear, and exact terms, as to enable any person skilled in the art or science to which the said invention or discovery appertains, or with which it is most nearly connected, to make and use the same, and with a specification of the parts and improvements and combination which they claimed as their invention, and with drawings and models and written references explaining the said invention or discovery, and explaining the principle and the mode in which they contemplated the application of the principle, by which it might be distinguished from other inventions; which said description was signed by the said John Myers and said Robert G. Eunson, and attested by two witnesses, and filed in the Patent-Office.

That the said Myers and said Robert G. Eunson, made oath that they verily believed that they then were the original and first inventors or discoverers of the invention or discovery for which they then solicited a

patent, and that they did not know or believe that the same was ever before known or used; and also, that they then were citizens of the United States.

And the said Myers and said Robert G. Eunson at the same time paid into the Treasury of the United States the sum of thirty dollars, and received a receipt therefor, and then and there also duly complied in all other respects with all the necessary conditions and requirements of the statutes of the United States in such case made and provided prior to the granting of the letters-patent hereinafter mentioned.

That on the 23d day of May, 1854, letters-patent of the United States, bearing date on that day, were issued to the said John Myers and said Robert G. Eunson, according to law, whereby there was granted to them, their heirs, executors, administrators or assigns, for the term of fourteen years from the 23d day of May, 1854, the full and exclusive right and liberty of making, constructing, using, and vending to others to be used, the invention or discovery aforesaid, a description whereof was given in the words of the said Myers and said Robert G. Eunson, in the said schedule annexed to the said letters-patent, and was made part of the same.

That the said letters-patent were issued in the name of the United States of America, and were sealed with the seal of the Patent-Office of the United States, and were signed by the Secretary of the Interior, and were countersigned by the Commissioner of Patents, and were numbered 10,965, and were issued and delivered to the said Myers and Robert G. Eunson.

That, thereupon, after the issuing of the said letters-patent as aforesaid, the said Myers and said Robert G. Eunson put the said invention into use by making, using, and vending the same to others, and licensing large numbers of such machines.

And your orators pray, that said letters-patent, and the schedule annexed thereto, as aforesaid, may be deemed and taken as part of their bill; and to the originals of which, or a duly authenticated copy thereof, now in your orators' possession, and ready to be produced, they crave leave to refer.

And your orators further show that, on the 13th day of May, 1868, on the application of the said John Myers and said Robert G. Eunson, they having then and there duly complied in all respects with the provisions of the statutes in such case made and provided, and paid the fees required by law, the said letters-patent were extended for the term of seven years from the 23d of May, 1868, pursuant to the statute in such case made and provided.

2 And your orators further show that, by assignment, dated the 20th day of May, 1868, duly signed, sealed, stamped, and recorded in the Patent-Office, the said Robert G. Eunson sold and assigned to Eugene S. Eunson all his right, title, and interest in and to said letters-patent, and the extension thereof, and all damages for infringing the same.

And, by like assignment, dated the 19th day of June, 1868, the said John Myers assigned to your orator, the said Jacob Lagowitz, all his right, title, and interest in said extended term of said letters-patent, within and for the State of New Jersey.

And your orators further show that, since the obtaining of said extension of said letters-patent, the said John Myers has died, leaving a will, whereby he appointed the said Margaret Myers, who is the widow of said John Myers, deceased, his sole executrix; and the said Margaret Myers has duly qualified as such executrix.

And your orators further show that, prior to the commencement of this present suit, your orators duly filed in the Patent-Office of the United States, a disclaimer of part of the first claim of said letters-patent; to which said disclaimer your orators crave leave to refer.

And your orators further show that, said letters-patent have been in controversy before the circuit court of the United States for the southern district of New York, in various actions and suits at law and in equity founded thereon, viz: 1st. One action at law, wherein Eben Peck and Gilbert J. Bogert were plaintiffs, and John Frame, John M. Nichols, and William O. Robbins were defendants. 2d. One suit in equity, wherein said Eugene S. Eunson and Margaret Myers, executrix, were complainants, and John Dunbar and Jeremiah Hopper, were defendants. 3d. One suit in equity, wherein said Eugene S. Eunson and Margaret Myers, executrix, were complainants. and Joseph Swift was defendant. 4th. One suit in equity, wherein said Eugene S. Eunson, Margaret Myers, executrix, Eben Peck and Gilbert J. Bogert were complainants, and John Frame, John M. Nichols, and William O. Robbins were defendants. 5th. One suit in equity, wherein Eugene S. Eunson and Jacob Lagowitz were complainants, and Thomas B. Peddie was defendant. That said first-mentioned action at law came on for trial before the Honorable Lewis B. Woodruff and a jury, at the April term of said circuit court, in the year 1870. Said defendants were represented by counsel, and vigorously contested said action, denied infringement of said letters-patent, and denied the novelty of the invention therein described, and attempted to prove that the said invention had been previously known to be used by John Frame, Isaac Smith, John N. Lyman, and Charles Turner.

That, nevertheless, the said jury rendered a verdict in favor of the said plaintiffs upon all the issues in said action, and sustained the validity of said letters-patent, and the charge of the infringement thereof, and assessed the plaintiffs' damages at the sum of five thousand dollars.

That each and all of said suits in equity came on for hearing before the Honorable Samuel Blatchford, at the February term of said circuit court, in the year 1871, the said defendants respectively denying infringement of said letters-patent, and also denying the novelty of the inventions therein described, and setting up various and separate defences thereto, contending that the same had been previously known to and used by Charles Turner, at Troy, Batestown, and Cohoes, New York; Isaac Smith, at New York; John N. Lyman at Yonkers and New York; Daniel Doncaster, at Albany; James Hay, Henry McGoffin, and James Moses, at Cohoes; C. M. Whiting, at Franklin, Mass.; George W. Cook, at Franklin, Mass.; Alvah Metcalf, at Franklin, Mass.; William Rockwood, at Franklin, Mass.; E. W. Robbins, at New York; Asa M. Board, at Hillsborough, New Hampshire; George Hyde, at Brooklyn, New York; J. B. Groham, at the city of New York; R. Dorsett, at the city of New York; H. J. Neilson, at the city of New York; and had been described in a certain printed publication called Holzapffel's Mechanical Turning and Manipulation, published in London, 1847, at vol. 2, pages 804 to 816; and in letters-patent of the United States to Pearson Crosby, dated November 3, 1841, and April 8, 1851; and in letters-patent of the kingdom of Great Britain to A. E. L. Bellford, dated May 2, 1853, sealed November 2, 1853, and in letters-patent of the United States to Manasseh Andrews and James Sproat, dated December 31, 1839.

That said suits were argued by counsel at said term; and thereupon, upon consideration thereof, decisions were rendered in said several suits, decreeing that said letters-patent were valid, and that the defendants

had severally infringed the same, and directing perpetual injunctions and accounts of profits.

And your orators further show that Anson G. P. Dodge & Charles Hebbard & Benjamin Meigs, composing the firm of Dodge & Co., during the original term of said letters-patent, to wit, from the 22nd day of September, 1866, were engaged in infringing said letters-patent by the use of a certain resawing machine made by the Huntington Machine Works, of and at Newark, Essex County, New Jersey, in infringement of said letters-patent, & which said resawing machine is the same used by Norman W. Dodge, F. Benjamin Meigs, together with one William E. Dodge, special partner, composing defendants; and thereupon, in order to obtain the right to continue to use the same, said Dodge, & Hebbard & Meigs, on the 22d day of September, 1866, purchasedof one Mr. F. Schureman, an assignee of mesne assignments, of the said John Meyers & Robert G. Eunson, all of the right, title, & interest of said patentees in and to the original and now expired term of said letters-patent, within and for the county of Hudson, New Jersey.

And your orators further show that all of the right, title, and interest of said defendants in and to said letters-patent, has and did expire and terminate, on the 23d day of May, 1868, by its own limitation; that the resawing machine now used by said defendants, and wrongfully made, by infringers upon said letters-patent.

And your orators charge that, by reason of the matters aforesaid, the defendants, Norman W. Dodge, F. Benjamin Meigs, & William E. Dodge, who compose the present said firm of Dodge & Company, and who are the successors and privies of said Anson G. P. Dodge, Charles Hebard, & F. Benjamin Meigs, admitted the novelty of the invention described i said letters-patent and their infringement thereof, and are estopped from denying the same.

3 And your orators have, ever since the date of the said assignments to them, been, and now are. entitled to all the rights, interests, and privileges thereby secured unto them in and to the said invention or discovery, in the said letters-patent, and assignments and extension particularly set forth, and are, and ever since the date thereof have been, entitled to the exclusive use of the said invention and improvement within the State of New Jersey.

And your orators further show unto your honors that the said invention or discovery, so patented aforesaid unto the said Myers and the said Robert G. Eunson, is of very great utility; and that the same has been extensively introduced into public use, and that the public have generally acquiesced in your orators' exclusive right to the same; and your orators would, but for the wrongful acts of the said defendants and others acting in concert with them, have made large gains. profits and advantages, from the manufacture, use and sale of the said invention; and your orators would, but for the wrongful acts and doings of the said defendants and others acting in concert with them, now be enabled to use the said invention, to which they are entitled to the exclusive right as aforesaid, with profit and advantage, but that by the said wrongful acts and doings they are now prevented and hindered from so doing.

And your orators further show unto your honors, upon information and belief, that the said defendants Norman W. Dodge, F. Benjamin Meigs, and William E. Dodge, well knowing the premises and the rights and privileges secured unto your orators, and in order to deprive them of the profits, benefits, and advantages which might and otherwise would

have accrued to them, at the city of Jersey City and elsewhere, and within the said State of New Jersey and elsewhere, and without the license or permission of your orators, or either of them, they, the said defendants, have, ever since the 23d day of May, 1868, unlawfully and wrongfully made or caused to be made, sold or caused to be sold, used or caused to be used, one or more resawing machines, each and all containing the said invention, discovery, improvements, and combinations, consisting, as therein and in the schedule set forth, of the employment or use of the deflecting plate E E, one or both placed at the sides of the saw as therein shown, for the purpose therein described; 2d, the employment of the clamps H, as therein shown, substantially as and for the purpose described; and also the employment of an adjustable bed, F., with clamps, as described, in combination with the saw, when the saw has a stiffening plate in line with said bed, as and for the purpose described, the exclusive right to which is secured to your orators, as hereinbefore set forth, and which said unlawful making, use, and ale, by the defendant as aforesaid, is a violation and infringement of your orators' exclusive rights and privileges; and that the said defendants have derived and received, and are still deriving and receiving, from such use great gain and profits, but to what amount your orators are ignorant and cannot set forth; but your orators believe the same to be about the full sum of twenty thousand dollars, and so charge the fact to be; and pray that the defendants may be required to make a disclosure of all such gains and profits.

And your orators in like manner aver that the defendants, though requested to desist from such unlawful use, and to pay to your orators such gains and profits as the defendants have actually made, refuse so to do; by means whereof your orators are and have been greatly injured, and are now prevented from putting the said invention or discovery into successful operation, and are deprived and prevented from receiving the gains and profits to which they are lawfully entitled, from the exclusive rights and privileges so granted and secured to them as aforesaid, and which they would have derived and acquired, and would now derive and acquire, but for the said wrongful acts of the said defendant.

And your orators pray that the said defendants may be compelled by a decree of this honorable court, to account for, and pay over unto your orators all such gains and profits as have accrued or arisen to, or been earned or received by, the said defendants, and all such gains and profits as your orators would have received but for the said wrongful acts and doings of the said defendant; and that the court will increase the same according to law.

And that the said defendants and each of them, and their attorneys, solicitors, and clerks, servants, agents, and workmen may be perpetually enjoined and restrained by the decree of this court from, directly or indirectly, making or causing to be made, using or causing to be used, or vending to others to be used, in any manner, any machines containing or embodying the said invention, granted by the said letters-patent, as issued, and extended and assigned as aforesaid unto your orators; and from infringing upon or violating the said letters-patent, by the use or sale of the said machines in any way whatsoever; and that all such infringing machines may be forthwith destroyed, or delivered up to your orators, and that the said defendants may be decreed to pay the costs of this suit; and that your orators may have such other relief as the equity of the case may require, and as to your honors may seem meet.

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To the end, therefore, that the said defendants may, if they can, show why your orators should not have the relief hereby prayed, and may full, true, direct, and perfect answer make, according to the best of their or their clerks', agents', or workmen's knowledge, remembrance, information, and belief, to the several matters hereinbefore averred and set forth, as fully and particularly as if the same were here repeated paragraph by paragraph, and they were thereto severally and specifically interrogated; and especially that said defendants answer and set forth:

First. Whether the said John Myers and Robert G. Eunson were not, prior to the 23d day of May, 1854, the true, first, and original inventors or discoverers of the said invention or discovery, described in said letters-patent, and every material part thereof; and if not, who was or were the true, original, and first inventor or inventors of the same; and if any other person or persons was or were the true, first, and original inventor or inventors of the same, where he or they reside; and where and when he or they invented or discovered the same; and how the invention or discovery of such other person or persons, if any, differed, if at all, from the said invention or discovery of said John Myers and Robert G. Eunson.

Second. Whether said defendants have at any time, and if so, where and when, made, sold, used, or caused to be made, sold, or used, any circular saw or saws having, employing, or using deflecting plates, one or both placed at the sides of the saw, as and for the purpose described in said letters-patent, or if the circular saw or deflecting plates differed from those described in said letters-patent, in what particulars they differed therefrom, or in what respect they were differently applied or combined from those described in said letters-patent, if at all.

Third. Whether said defendants have at any time, and if so, where and when, made, sold, used, or caused to be made, sold, or used in connection with a circular saw or saws, substantially as described in said letters-patent, any clamp or clamps substantially as and for the purpose described in said letters-patent; and if said defendants have used a clamp or clamps in connection with a circular saw, in what respect such clamp or clamps differed from the clamps described in said letters-patent; and in what respect they were differently applied to or combined with such saw, if at all.

Fourth. Whether the machine or machines now in use by the defendant for the purpose of sawing or resawing thin boards, was and is not substantially similar to the machine described in said letters-patent; and if not, how the same differs therefrom.

Fifth. Whether the defendants have not made large gains and profits from the use of such saw and deflecting plates and clamps; and if so, to what amount.

May it please your honors to grant to your orators a writ of subpœna ad respondendum, issuing out of and under the seal of this honorable court, directed to the said defendants Anson G. P. Dodge, Dexter B. Chambers, William J. Hunt, and Charles Hebbard, commanding them to be and appear, and make answer to this bill of complaint, and to perform and abide by such order and decree herein, as to this court may seem required by the principles of equity and good conscience.

May it also please your honors to grant to your orators a provisional or preliminary injunction issuing out of and under the seal of this honorable court, enjoining and restraining the defendants, and each of them, or their attorneys, solicitors, clerks, servants, workmen, and

agents to the same purport, tenor, and effect hereinbefore prayed for, in regard to said perpetual injunction.

And your orators will ever pray, &c.

EUGENE S. EUNSON,
By his Sol'rs.
JACOB LAGOWITZ.

MATHEWS & BETTS,
Complainants' Solicitors.
FREDERICK H. BETTS, *Of Counsel.*

UNITED STATES OF AMERICA,
Southern District of New York, ss:

On this eig'th day of July, 1871, before me, came Jacob Lagowitz, to me personally known, who, being by me duly sworn, did depose and say that he is one of the complainants in the foregoing bill of complaint named, and that he has read the said bill subscribed by him, and knows the contents thereof, and that the same is true of his own knowledge, except as to matters which are therein stated to be on information and belief, and as to those matters he believes it to be true.

JACOB LAGOWITZ.

Sworn to & subscribed before me this 8th day of July, 1871.
JOHN ROE,
Justice of the Peace.

4½ (Indorsed:) Circuit court of the United States, southern district of New York. Eugene S. Eunson & Jacob Lagowitz vs. Norman W. Dodge et al. Bill of complaint. Matthews & Betts, sol'r.

Consented that within may be substituted in place of original bill as filed.
July 18, 1871.

S. D. LAW,
Def't's Sol'r.

Filed July 19, 1871.

5 U. S. circuit court, southern dist. of New York.

EUGENE S. EUNSON & JACOB LAGOWITZ,
vs.
NORMAN W. DODGE, T. BENJAMIN MEIGS, & William E. Dodge.

SIR: Please to enter my appearance for the defendant in the above cause.
Dated New York, July 3, 1871.
Yours, &c.,

S. D. LAW,
Sol'r for Def't, 4 Warrren St.

To K. G. WHITE, Esq.,
Cl'k U. S. Circuit Court.

(Endorsed:) Circuit court of the United States, southern district of New York. Eugene S. Eunson et al. vs. Norman W. Dodge et al. Notice of appearance. To K. G. White, cl'k U. S. cir. c't. Filed July 6, 1871.

6 United States circuit court, southern district of New York.

EUGENE S. EUNSON AND JACOB LAGOWITZ
vs.
NORMAN W. DODGE, T. BENJAMIN MEIGS, and William E. Dodge. } In equity.

The joint and several answer of Norman W. Dodge, T. Benjamin Meigs, and William E. Dodge, defendants to the bill of complaint of the said above-named complainants.

These defendant', now and at all times hereafter saving and reserving to themselves all and all manner of benefits and advantages of exception to the many errors and insufficiencies in the complainants' said bill of complaint contained, for answer thereunto, or unto so much or such parts thereof as these defendants are advised is material for them to make answer unto, answering say:

That they are informed and believe, and therefore admit, that John Myers and Robert G. Eunson, in the said bill of complaint mentioned, made application to the proper Department of the Government of the United States, for letters-patent for an improved machine for sawing thin boards, &c.; and that letters-patent of the United States were granted to the said John Myers and Robert G. Eunson for such alleged improvements; which said letters-patent, bear date the 23d day of May, 1854, as is set forth in said bill of complaint; but these defendants do not know, and are not informed, save by said bill of complaint, whether the application for said letters-patent was made by said John Myers and Robert G. Eunson, as stated in said bill of complaint, and as required by law to be made, or whether said letters-patent were duly, legally, and properly granted; and they leave the complainants to make such proof of the said several matters, as they may be advised.

7 And these defendants, further answering, on information and belief, admit that said letters-patent were afterwards, and on or about the 13th day of May, 1868, extended to the said John Myers and Robert G. Eunson for the term of seven years from the 23d day of May, 1868; but these defendants are not informed, save by the bill of complaint in this cause, whether the application for said extension was made, & the said extension granted, in compliance with the provisions of the statutes in such cases made and provided; and they leave the complainants to make such proof as they may be advised.

And these defendants, further answering, say that they have no knowledge or information, other than that contained in said bill of complaint, whether the said extended term of said patent was assigned to the complainants in this suit, as is alleged in said bill of complaint; and whether said John Myers has deceased, leaving a will, in & by which he appointed his widow, Margaret Myers, his sole executrix; and whether said Margaret Myers has duly qualified as such, as is also alleged in said bill of complaint; and these defendants leave the complainants to make such proof thereof as they may be advised.

These defendants, further answering, on information & belief, admit that various actions & suits, at law & in equity, have been brought, under said letters-patent, in the circuit court of the United States for the southern district of New York, against various persons, as is alleged in said bill of complaint, and that in such actions and suits at law and in equity the said letters-patent have been sustained as good & valid.

8 These defendants, further answering, on information and belief, admit that the complainants have filed, in the Patent-Office of the United States, a disclaimer of a part of the invention originally claimed in said patent as is alleged in the bill of complainant.

And these defendants, further answering, say that they compose the firm of business copartnership of Dodge & Meigs, who are engaged in and carry on the lumber business, in Jersey City, county of Hudson, & State of New Jersey; that said business is managed & carried on by said Norman W. Dodge and T. Benjamin Meigs, who are the general partners in said partnership or firm, and that said William E. Dodge is only a special partner in said firm, and has an interest in such business only as such special partner, and does not take any active part in the management and direction of said business.

That said business was commenced in May, 1864, & has been carried on since that time continuously till the present time, under the firm names of Dodge & Co., and Dodge & Meigs, though with different partners in said firm at different times, and that said firm has, since about the 1st day of January, 1869, consisted of said Norman W. Dodge and T. Benjamin Meigs, as general partners, and said William E. Dodge, as special partner, and has done business under the firm-name of Dodge & Meigs.

That said firm of Dodge & Co., in the year 1866, and at the time of the assignment hereinafter mentioned to said firm by Melancthon
9 F. Schureman and John Myers, consisted of Anson G. P. Dodge, Charles Hebard, and T. Benjamin Meigs; that, subsequently, Dexter B. Chambers and Norman W. Dodge were taken into said firm as partners thereof, and that said firm at that time carried on business in the city of New York, and in said Jersey City, and also at Williamsport and other places in the State of Pennsylvania; that, on or about the 1st day of January, 1869, said Anson G. P. Dodge, Charles Hebard, and Dexter B. Chambers, took a portion of the business before that time carried on by said firm, to wit: The business carried on in the city of New York, and at Williamsport, State of Pennsylvania, and have since that time carried on business under the name of Dodge & Co.; and T. Benjamin Meigs and said Norman W. Dodge, with said William E. Dodge, who then became a special partner, continued to carry on, under said firm-name of Dodge & Meigs, the remaining portion of the business of said firm, including the business carried on at Jersey City aforesaid; and that said firm of Dodge & Meigs, in connection with the business so carried on at Jersey City, & at other places than the city of New York and Williamsport aforesaid.

That said firm of Dodge & Co., from the time of its formation down to the 1st of January, 1869, carried on, and these defendants as such firm. of Dodge & Meigs from that date down to the present time, have carried on & are now carrying on, at Jersey City aforesaid, the business of buying and selling lumber, & resawing the same for sale; and that these defendants have used, and are now using, in Jersey City, for the purpose of resawing such lumber, among other machines, one known as a circular veneer-saw, the same being attached to the shaft in sections, by flanges on each
10 side, and having also deflecting plates, and that such machine is also constructed with feed-rollers and two clamping-instruments; that such machine was made by the Huntington Machine Works, of Newark, New Jersey, and was purchased of said company by said firm of Dodge & Co., on or about the 10th day of May, 1865, & has been used by said firm and these defendants, in & about their business, and

for the resawing of lumber, ever since the same was so purchased, and that such machine, at the present time, is in operation and construction, the same as when the same was purchased by said firm of said company, & has not been changed or altered since it was so purchased; that said machine, after it was so purchased of the Huntington Machine Works, was used by said firm of Dodge & Co. in their business in the resawing of lumber, openly and publicly, for some fifteen months, & without any claim or demand being made by any person whatever, that the said machine infringed in any manner upon the rights of any person or of any letters-patent, or that said machine contained or employed any invention belonging to any other person; that, in or about the month of August or September, 1866, one Melancthon F. Schureman, who claimed to be the owner, by assignment, of the Myers & Eunson patent for improvements in sawing-machines, granted May 23d, 1854, within and for the State of New Jersey, represented or pretended to said Dodge & Co. that said machine, bought of the said Huntington Machine Works, was an infringement of the said Myers & Eunson patent, and of his, said Schureman's rights therein, and threatened suit
11 for such alleged infringement, but at the same time offered to sell to said firm of Dodge & Co. his, said Schureman's, right & interest under said patent for the county of Hudson, in said State; the said firm of Dodge & Co., though then believing that such machine so used by them did not, in any manner, infringe upon said letters-patent, after further consideration of the matter, & for the purpose of removing all doubt as to their right to run & use said machine in their said business, concluded to purchase of said Schureman his right and interest under said patent, within and for the county of Hudson, New Jersey, and that said firm did, on or about the 22nd day of September, 1866, purchase of said Melancthon F. Schureman all his right, title, and interest in said patented improvements, for said Hudson County, State of New Jersey, and received of said Schureman an assignment of his said interest, as will more fully appear by said original assignment or a copy thereof, ready to be produced; and that John Myers, one of the patentees in said Myers & Eunson's patent, to whom said Eunson had theretofore assigned all his right, title, & interest in said patent, in certain States and Territories, including the State of New Jersey, and who assigned said patent for said State of New Jersey to said Schureman, also joined with said Schureman in said assignment to said Dodge & Co., and covenanted that the title of said Schureman to said patent for said Hudson County was good, and that no other person had any right or title thereto in said county; and that said assignment was duly recorded in the Patent-Office of the United States, on the 22d day of December, 1866. And these defendants, for greater certainty,
12 refer to such assignments from Myers & Eunson to Myers, and from Myers to Schureman, and from Schureman & Myers to said Dodge & Co.; to which assignments, as making a part of this answer, reference is hereby made.

And these defendants, further answering, say that said firm of Dodge & Co., under said assignment so made to them by said Schureman, continue to use in their said business said machine, so bought of the Huntington Machine Works; that said machine was so in use by them on the 23d day of May, 1868, when the said Myers & Eunson patent was extended, and has been continually in use by them and these defendants in the said business for the resawing of lumber, from the time of said assignment, on the said 22nd day of September, 1866, until the present time.

And these defendants, further answering, as they are advised & believe, allege and will maintain & insist, that they have, under and by virtue of the acts of Congress in relation to patents in such cases made and provided, full and legal right and authority to use the said planing or sawing machine, so used during the original term of said letters-patent, under an assignment of such patent, and which was in use by these defendants or by the said firm, to which they succeeded, at the time of the extension of said patent.

And these defendants, as they are advised & believe, allege and will insist and maintain that they have not & are not infringeing any of the rights & privileges legally belonging to the complainants, under and by virtue of said letters-patent.

13 And these defendants deny all and all manner of combination with any person or persons whatsoever, and all intention to injure or destroy any rights or privileges secured to or belonging to the complainants, or to deprive them of any gains or profits to which they may be legally entitled by virtue of the premises.

And these defendants, further answering, deny that the said complainants are entitled to the relief, or any part thereof, in their said complaint demanded.

And these defendants pray the same advantage of their aforesaid answer as if they had pleaded or demurred to the said bill of complaint.

Without this, that any matter or thing therein contained, and not specifically admitted or denied, is true, to the knowledge of these defendants.

All of which matters and things these defendants are ready and willing to aver, maintain, and prove as this honorable court shall direct; and they pray hence to be dismissed, with their reasonable costs and charges in this behalf most wrongfully sustained.

T. B. MEIGS.
N. W. DODGE.
W'M E. DODGE,
Per T. B. MEIGS.

S. D. LAW, *Sol'r for Def't and of Counsel.*

SOUTHERN DISTRICT OF NEW YORK,
City and County of New York, ss:

T. Benjamin Meigs, one of the above-named defendants, being duly sworn, deposes & says that the other defendants herein named are in Europe; that the facts set forth in the above answer are within his personal knowledge; that he has read the foregoing answer, and know' the contents thereof, and that the same are true, of his own knowledge, except as to those matters therein stated on information and belief, and as to those matters, he believes *it* to be true.

Sworn to before me this 25th day of November, 1871.
[SEAL.]
A. T. GURLITZ,
Notary Public, New York.

(Indorsed:) U. S. circuit court for the southern district of New York. Eugene S. Eunson et al. vs. Norman W. Dodge et al. Answer. Filed Nov. 22, 1871.

14 Circuit court of the United States for the southern district of New York.

EUGENE S. EUNSON ET AL.
vs.
NORMAN W. DODGE ET AL.

The replication of Eugene S. Eunson & Jacob Lagowitz, complainants, to the answer of Norman W. Dodge, T. Benjamin Meigs, and William E. Dodge, respondents.

The repliants, saving and reserving now and at all times hereafter, all and all manner of benefit and advantage of exception which may be had or taken to the manifold uncertainties and insufficiencies of the said answer, for replication thereto, say that he will aver, maintain, and prove the bill of complaint to be true, certain, and sufficient in law to be answered unto; and that said answer is uncertain, untrue, and insufficient to be replied unto, without this, that there is any other matter or thing whatsoever in the said answer contained, material or effectual in the law to be replied unto, and not herein and hereby well and sufficiently replied unto, confessed, and avoided, traversed and denied, is true; all which matters and things the repliant will be ready to aver, maintain, and prove, as this honorable court shall direct; and humbly pray as in and by the bill is already prayed.

MATHEWS & BETTS,
Complainants' Solicitors, 31 & 33 Pine street.

(Indorsed:) U. S. circuit court. Eugene S. Eunson et al. vs. Norman W. Dodge et al. Replication. Filed Nov. 27, 1871.

15 Circuit court of the United States, southern district of New York.

EUGENE S. EUNSON AND JACOB LAGOWITZ
vs.
NORMAN W. DODGE, T. BENJAMIN MEIGS, AND William E. Dodge.

We, the solicitors for the respective parties to this suit, do hereby agree that the following state of facts is proved by the pleadings and proofs in this cause.

Dated Nov. 21st, 1871.

MATTHEWS & BETTS,
Compl't's Sol'rs.
S. D. LAW, *Def't's Sol'r.*

Statement of facts.

The complainants are the owners, within and for the State of New Jersey, of letters-patent of the United States, granted to John Meyers and Robert G. Eunson, May 23d, 1854, for an improved machine for sawing thin boards, &c., No. 10965, and extended for seven years, from May 23d, 1868; a copy of which patent is annexed, marked Exhibit A.

The defendants are copartners under the name of Dodge & Meigs, doing business as lumber merchants, in Jersey City, Hudson County, N. J., (Norman W. Dodge and T. Benjamin Meigs, being general
16 partners,) and William E. Dodge, special partner, under the laws

of the State of New York, and are the successors in interest as to all said business carried on at Jers'y City of the firm of Dodge & Co., originally composed of Anson G. P. Dodge, Charles Hebbard, and T. Benjamin Meigs, and to which firm Dexter B. Chambers and Norman W. Dodge were afterwards admitted as partners.

In May, 1865, the Huntington Machine Works of Newark, Essex County, New Jersey, built and sold without right or license under said patent to Anson G. P. Dodge, T. Benjamin Meigs, and Charles Hebard, then composing the firm of Dodge & Co., a resawing machine, containing and employing substantially the inventions or devices described and claimed in the 1st, 2nd, and 4th claims of said letters-patent.

The said Dodge, Meigs, and Hebard used said machine in their said business, in good faith, without knowledge of said patent, for some fifteen months, when they were notified by one M. F. Shureman, who was an assignee for the county of Hudson, State of New Jersey, that said machine was claimed to be an infringement of said patent; and to remove all doubt as to their right to run and use said machine, said Dodge & Co. purchased of said Shureman, on the 22nd day of September, 1866, the said letters-patent, and all right and interest therein within and for the said county of Hudson, State of New Jersey.

The chain of title of the defendants is contained in and shown by the Exhibits B, C, D.

Said Dodge, Meigs, and Hebard continued to use said machine in their business at Jersey City, within the said county of Hudson,
17 State of New Jersey, during the unexpired original term of said patent, and until the expiration thereof, and had the same in use at the time of the expiration of such original term of said patent; and the defendants, as successors of said Dodge, Meigs, and Hebard, have continued to use said machine during the extended term of said patent, in the same place and in the same manner as such machine was used during the original term of said patent, and at the time of the expiration thereof.

(Here follow two diagrams marked page 17.)

18 A.

The schedule referred to in these letters-patent, and making part of the same.

To all whom it may concern:

Be it known that we, John Myers and Robert G. Eunson, of the city, county, and State of New York, have invented certain new and useful improvements in machines for sawing lumber into thin stuff, for mirror backs, picture-frame backs, etc., etc.; and we do hereby declare, that the following is a full, clear, and exact description of the construction and operation of the same, reference being had to the annexed drawings, making a part of this specification, in which Fig. 1 is a plan, or top view of our improved machine. Fig. 2 is a side elevation of do. Fig. 3 is a side view of a circular saw, and one of the deflecting plates which covers the upper part of the stiffening plates of the saw. Fig. 4 is a vertical section of the circular saw, deflecting plates and guide troughs. The plane of section being through the centre of the saw, and transversely with the guide troughs. Similar letters of reference indicate corresponding parts in the several figures.

This invention relates to certain new and useful improvements in

machines for sawing lumber into thin stuff for mirrors, and picture-frame backs, and other purposes for which thin stuff is used. The nature of the invention consists—1st. In the employment, or use of deflecting plates—one or two—placed at the sides of a circular saw for the purpose of preventing the sawed stuff from coming in contact with the sides of the saw, and enlarging or expanding the saw kerf, and thereby preventing the stuff from binding against the edge of the saw near its teeth. The deflecting plates also allow the saw to be stiffened by a proper plate secured to it, and a thin veneer saw may consequently be employed, which will cause but a small waste of stuff in sawing, as a narrow kerf is made thereby. 2d. Our invention consists in the employment or use of elastic clamps, attached to the ordinary adjustable and elastic beds, between which the stuff is fed to the saw. The clamps, above mentioned, have an elasticity independent of the beds, and compensate for the varying thickness of the different pieces of stuff to be sawed, by holding firmly the extreme end of the stuff, and keeping it in proper position to the saw, however much the elastic bed may be expanded by a succeeding piece of stuff of greater thickness. 3d. Our invention consists in the employment or use of knives, or cutters, secured to the adjustable beds, and so arranged as to cut or smooth off the rough and projecting sides of the stuff at the ends, making it of uniform thickness. 4th. Our invention consists in the combination of an adjustable bed and circular saw, arranged as will be hereafter shown.

To enable others, skilled in the art, to make and use our invention, we will proceed to describe its construction and operation.

A is the frame, which may be constructed in any proper manner. B is the shaft, running transversely across the front part of the frame, on which shaft a circular saw, C, is placed. The saw C is formed of thin steel plate, and is such as is used for sawing veneers. On one side of this saw, a circular plate, D, is secured by rivets, or screws, (*a*,) the plate being somewhat less in diameter than the saw. (See Figs. 3 and 4.) The plate D stiffens the saw, and without its use, a comparatively much thicker saw would be required.

E E′ are deflecting plates, placed one at each side of the saw. The deflecting plate E covers the upper part of the stiffening plate D, (as shown in Figs. 3 and 4,) and the inner end does not project outward from the saw C quite as far as the outer end, (as shown in Fig. 1.) The other deflecting plate E′, on the opposite side of the saw, is rather smaller in diameter than the deflecting plate E, and projects from the saw at about an equal distance at both ends. F F, (Figs. 1 and 2,) are two feed-roller beds, placed vertically in the back part of the frame A, and parallel with each other. Both of these beds are made adjustable by means of screw-rods (*b*) which bear against the sides of the beds, the screw-rods of each bed being operated simultaneously by means of chains (*c*) passing around small toothed wheels (*d*,) (see Fig. 2,) at the ends of the screw-rods, (see Fig. 2.) G G are cranks, one of which is attached to one of the toothed wheels (*d*) of each bed The beds also have a lateral elasticity given them by means of India rubber, or other springs attached to them in any proper manner. H H H H are feed-rollers, placed in the beds F F; two rollers in each bed. (See Figs. 1 and 2.) The feed-rollers project some distance beyond the inner edges of the beds, (as shown in Fig. 1.) I I are clamps, attached to the inner ends of the beds F F. At the back part of each clamp there are two journals (*e*)) (*e*) (see Fig. 1,) one at the top and one at the bottom, (see dotted lines, Fig. 2.) These journals fit in boxes

(*f*) (*f*) which work or slide in recesses in the top and bottom pieces of the beds. The top boxes are shown in Fig. 1. J J are set-screws which pass transversely through the top and bottom pieces of each bed. The inner ends of these set-screws bear against India-rubber springs (*g*,) which are placed directly back of the boxes, (as shown in Fig. 1.) K K, (Fig. 1) are India-rubber springs at the top of the clamps, one spring to each clamp. These springs are placed between the clamps and set-screws L L, which pass transversely through the top pieces of the beds F F. M M are stops, which pass through the top pieces of the beds, one through each top piece. The stops regulate the distance of the lateral vibration of the clamps. O O are knives or cutters, placed vertically in the beds F F, one knife or cutter in each bed. The top and bottom of the cutters are fitted in slides (*h*) (*h*.) (See Fig. 1, in which the top slides are shown, which fit in the top and bottom pieces of the beds, and are regulated by set-screws P P.) The cutting
21 edges of the knives or cutters are on a line with the edges of the feed-rollers H. Motion is given to the feed-rollers H by proper gearing R, at the lower part of the rollers.

OPERATION.—The beds F F are adjusted relatively to the saw C, so that the stuff may be sawed into the desired thicknesses. Either side of the saw may be made the "line side," by fixing permanently, or destroying the elasticity of the proper roller bed. The stuff S, (see Fig. 1,) is placed between the feed-roller H, in the beds F F, and motion being communicated to the saw and feed-rollers, the stuff is fed towards the saw, and cut by it; the two pieces being prevented from bearing against the sides of the saw by means of the deflecting plates E E′. (See Fig. 1.) When the outer end of the stuff has passed the innermost feed-roller, the clamps I I bear against the stuff, and hold it in a proper relative position to the saw. A fresh piece of stuff is now placed between the feed-rollers, the latter piece of stuff forcing forward the preceding piece. If the last piece of stuff is rather thicker than the preceding piece, it merely acts upon the beds, and forces the elastic one farther from the permanent one, without affecting the clamps, which are an independent elasticity, owing to the springs (*g*,) K. The knives or cutters O O cut or smooth off to an equal thickness the extreme ends of the stuff, which is split and not sawed—the usual practice in saw mills. We will suppose that the stuff S, (Fig. 1,) is two inches in thickness, and it is desired to saw it in two strips, one of which is to be one-quarter inch in thickness; the one-quarter inch strip being the thinnest, may be deflected by the plate E, as it is inclined or projects outward from the same farther than the plate E′. The roller-bed, in line with the deflecting plate E, is permanently fixed at one-quarter of an inch from the sides of the saw. The opposite bed being elastic, the side of the saw on which the thin strip passes is the "line side." The opposite of the saw may be made the "line side," by permanently fixing the opposite roller bed, and allowing the other one to remain elastic. By the above improvements, we are enabled—1st. To employ a thin
22, 23 veneer-saw, and consequently a small amount of stuff is lost, as the saw kerf is narrow. This is an object in sawing thin stuff. 2d. The stuff to be sawed is always kept in a proper relative position to the saw when varying in thickness, and the ends of each piece of stuff is smoother, or reduced to an equal thickness before it leaves the feed-rollers.

We do not claim the adjustable and elastic roller-beds F F, for they have been previously used. But what we claim as new, and desire to secure by letters-patent, is:

1st. The employment or use of the deflecting plates E E′, one or both placed at the sides of the saw, as herein shown, for the purpose of preventing the sawed stuff from bearing against the sides of the saw, and expanding the saw-kerf, and also for the purpose of allowing a thin veneer-saw to be stiffened by plates D, one or two, as desired.

2d. We claim the employment or use of the clamps I I, arranged as herein shown, or in an equivalent way, so as to have a lateral elastic movement, independent of the roller-beds, to which said clamps are attached, for the purpose of compensating for the varying thickness of different pieces of stuff, and keeping them in a proper relative position to the saw.

3d. We claim the knives or cutters O O, placed in the roller-beds F F, and arranged substantially as herein shown and described, and for the purpose as set forth.

4th. We claim the employment of an adjustable bed, F, with clamps, as described, in combination with the saw C, when the saw has a stiffening-plate, D, in line with said bed, by which the stiffened or rounded side of the saw is made the "line side."

JOHN MYERS.
ROBERT G. EUNSON.

Witnesses:
S. H. WALES.
JNO. W. HAMILTON.

24 To the Commissioner of Patents:

The petition of Eugene S. Eunson and Margaret Myers, widow and executrix of John Myers, deceased, both of the city, county and State of New York, respectfully shows:

That, on the 23d day of May, 1854, Robert G. Eunson and the said late John Myers did obtain letters-patent of the United States, bearing date on that day, and numbered 10965, for a certain new and useful resawing machine, denominated in said patent "an improved machine for sawing thin boards," &c.

That your petitioners are the joint and exclusive owners of said letters-patent within and throughout the whole of the United States and the territories thereof, as they verily believe, except the following portions and districts, which are, as they believe, owned by the following parties, viz:

The State of New Jersey, owned by the said Eugene S. Eunson and Jacob Lagowitz, jointly.

The city and county of Philadelphia, owned by persons unknown to your petitioners.

All that portion of the city of New York lying west of Broadway and Eighth avenue, owned by Eben Peck and Gilbert J. Bogert.

That your petitioners have reason to believe that, through inadvertence, accident, and mistake, and without any fraudulent or deceptive intention, the said patentees have claimed more than that of which, as claimed, they were the original inventors, to wit: The first claim of said letters-patent is too broad, in that it includes that which your petitioners here disclaim.

Your petitioners, therefore, hereby enter their disclaimer to that
25 part of the first claim of said letters-patent which covers the employment or use of the deflecting plate E, at the side of the saw, thereby causing the said claim to include only the combination of the saw described with both of the deflecting plates E and E′, when

both of said deflecting plates are used at one and the same time, in the manner and for the purposes described in said patent.

The said first claim of said letters-patent will accordingly be as follows:

1st. The employment or use of the deflecting plates E E′, both placed at the sides of the saw, as herein shown, for the purpose of preventing the sawed stuff from bearing against the sides of the saw, and expanding the saw-keef, and also for the purpose of allowing a thin veneer-saw to be stiffened by plates, D, one or two, as desired.

Your petitioners also desire to disclaim that part of said patentees' description of their invention wherein they say the nature of the invention consists, first, in the employment or use of deflecting plates "one or two" placed at the sides of a circular saw, &c., and to limit the nature of the invention to which claim is made to the combination with the saw of the two deflecting plates, one at each side of the saw as described.

This disclaimer is to operate to the extent of the interest in said letters-patent vested in your petitioners, who has paid ten dollars into the Treasury of the United States, agreeably to the requirements of the act of Congress in such case made and provided.

Nov. 30, 1870.

MARGARET MYERS,
Executrix of John Myers, deceased.
EUGENE S. EUNSON.

Witness:

26 "B."

The U. S. Patent-Office to all persons to whom these presents shall come, greeting:

This is to certify that the annexed is a true copy from the records of this office.

In testimony whereof I, Samuel A. Duncan, Acting Commissioner of Patents, have caused the seal of the Patent-Office to be hereunto affixed, this twenty-first day of June, in the year one thousand eight hundred and seventy-one, and of the Independence of the United States the ninety-fifth.

[SEAL.] SAMUEL A. DUNCAN,
Acting Commissioner.

A⁴, p. 352.

Whereas we, John Myers & Robert G. Eunson, both of the city, county, & State of New York, did obtain letters-patent of the United States for certain improvements in sawing-machines, which letters-patent bear date the 23d day of May, eighteen hundred and fifty-four;

And whereas we are each of us desirous of dividing our territory:

Now this indenture witnesseth that I, the said Robert G. Eunson, for and in consideration of the sum of one dollar to me in hand
27 paid by the said John Myers, and the receipt whereof is hereby acknowledged, and other valuable considerations, have assigned, sold, and set over, and do hereby assign, sell, and set over unto the said John Myers all the right, title, and interest which I have in the said invention as secured to myself and the said John Myers by said letters-patent for, to, and in the several States of Missouri, Arkansas, North Carolina, New Jersey, Michigan, Georgia, California, Tennessee,

Vermont, Wisconsin, and Pennsylvania, excepting thereof the city and county of Philadelphia, and in no other place or places.

The same to be held and enjoyed by the said John Myers for his own use and behoof of his legal representatives to the full end of the term for which said letters-patent have been granted, as fully and entirely as the same would have been held and enjoyed by me, the said Eunson, had this assignment and sale not been made.

In testimony whereof I hereunto set my hand and affix my seal this third day of April, eighteen hundred and fifty-six.

ROBERT G. EUNSON. [SEAL.]

Witnessed:
W'M K. MEREDITH.

Recorded June 10th, 1856. Ex'd. N. F. S.

28 "C."

Whereas John Myers and Robert G. Eunson, both of the city of New York, did obtain letters-patent of the United States for certain improvements in sawing-machines, which letters-patent bear date the 23d day of May, 1854;

And whereas the said Robert G. Eunson did assign to me, the said Myers, all his right, title, and interest in and to said patented improvements for and in certain States and Territories, among which is the State of New Jersey, which assignment bears date the 3d day of April, 1856:

Now know all men by these presents that I, the said John Myers, for and in consideration of the sum of three hundred & thirty-three dollars, secured to be paid to me by a promissory note for that amount of even date herewith, the receipt whereof is hereby acknowledged, I have sold, assigned, and set over, and do by these presents sell, assign, and set over unto Melancthon F. Schureman, and to his assigns, all my right, title, and interest in and to said improvements as secured by letters-patent aforesaid, for, to, and in Hudson County, in the State of New Jersey, and nowhere else; the same to be held and enjoyed by the said Melancthon F. Schureman for his own use and behoof, and for the use and behoof of his legal representatives and assigns, to the full end of the term for which said letters- have been granted, as fully and entirely as the same would have been held by me if the assignment had not been made, with full power, right, and title to make, use,
29 and sell all or any part of the interest, right, and title hereby assigned; and I do hereby agree at any time to furnish and sell to said Melancthon F. Shureman and his assigns, any number of the machines—the right to use, make, and sell which is hereby granted—at the lowest price that I shall then sell the same to any other person.

Now, the condition of this assignment is such that, if said note shall not be paid at maturity, then this assignment shall be void and of no effect, and the rights and interest herein conveyed shall revert back & belong to the said John Myers the same as if this assignment had not been executed.

In testimony whereof I have hereunto set my hand and affixed my seal this seventh day of April, (A. D.) 1856.

JOHN MYERS. [SEAL.

Signed, sealed, and delivered in the presence of—
SAM'L G. SOUTHMAYD.

NEW YORK, *April 24th*, 1856.

Personally appeared before me, a notary public for the city and county of New York, Sam'l G. Southmayd, who made oath that he witnessed the execution of the above instrument, for the purposes therein stated and nothing else.

Witness my hand and seal.

[SEAL.] W. WHEELRIGHT,
Notary Public.

30 Rec. April 28th & rec'd May 8th, 1856, in liber A[4], page 135, of transfers of patents.

In testimony whereof I have caused the seal of the Patent-Office to be affixed.

[SEAL.] C. MASON,
D. P. *Com'r of Patents.*

31

32 "D."

Whereas John Myers and Robert G. Eunson, both of the city of New York, did obtain letters-patent of the United States for certain improvements in sawing-machines, which letters-patent bear date the twenty-third day of July, A. D. eighteen hundred and fifty-four;

And whereas the said Robert G. Eunson did assign to me, the said Myers, all his right, title, and interest, in and to said patented improvements for and in certain States and Territories, among which is the State of New Jersey, which assignment bears date the third day of April, A. D. 1856.

And whereas the said John Myers did assign to Melancthon F. Schureman, all his right, title, and interest, in and to said patented improvements, for, to, and in Hudson County, in the State of New Jersey, and nowhere else, which assignment is dated April 7th, 1856, and recorded in the Patent-Office, liber A[4], p. 135, of transfers of patents:

Now, therefore, the said Melancthon F. Schureman, in consideration of three hundred dollars to him paid, doth hereby sell, assign, and set over unto Anson G. P. Dodge, and T. Benjamin Meigs, and Charles Hebard, partners, trading under the name of Dodge & Co., in Jersey City, New Jersey, and to their assigns, all his, the said Schureman's, right, title, and interest in said patent improvements.

And said Schureman covenants that he has good title to said patented improvements for Hudson County, New Jersey, and that the same is free from incumbrance.

33 And the said John Myers joins in this conveyance, and covenants that the title of said Schureman was good as to said improvement for the territorial extent of said Hudson County, when and after the said conveyance to him by said Myers, and that no other person has any right or title thereto, in Hudson County, under him, the said Myers, and that the said note, mentioned in the assignment from Myers to Schureman, is paid and extinguished.

Witness the hands and seals of said parties this twenty-second day of September, A. D. 1866.

JOHN MYERS. [SEAL.]

In presence of—
ROBERT OWEN.
EBEN PECK.

Schureman, under
Myers —

STATE OF NEW YORK,
County of New York, ss:

John Myers, on oath, says that when he conveyed the patent described in annexed assignment to M. F. Schureman, for Hudson County, N. J., he conveyed a good and unincumbered title to said Schureman for the same.

JOHN MYERS.

Subscribed and sworn to before me, Sept. 24th, 1866.

ROBERT OWEN,
Notary Public, New York.

[5-cent revenne stamp, cancelled.]

34 STATE OF NEW YORK,
County of New York, ss:

Melancthon F. Schureman, on oath says, that he owns, at the date of annexed assignments, the good and unencumbered title to the improvement therein mentioned, for the extent of Hudson County, N. J.

M. F. SCHUREMAN.

Subscribed and sworn to this 24th day of September, 1866, before me.

ROBERT OWEN,
Notary Public, New York.

[5-c't revenue stamp cancelled.]

STATE OF NEW YORK,
County of New York, ss:

On this twenty-fourth day of September, 1866, before me personally appeared John Myers and Melancthon F. Schureman, to me known to be the individuals described in, and who executed the foregoing instrument, and acknowledged that they executed the same.

[SEAL.] ROBERT OWEN,
Notary Public, New York.

[5-cent rev. stamp, cancelled.]

35 (Indorsed:) Circuit court of the United States, southern district of New York. Eugene S. Eunson & Jacob Lagowitz vs. Norman W. Dodge, F. Benjamin Meigs, & William E. Dodge. Agreed statement of facts. S. D. Law, sol'r for defendants; Matthews & Betts, sol'r for compl'ts. Filed Nov. 28, 1871.

36 *Decree.—Dated November* 27, 1871.

At a stated term of the circuit court of the United States of America, for the southern district of New York, in the second circuit, held at the United States court-rooms, in the city of New York, on the third Monday of October, in the year of our Lord one thousand eight hundred and seventy-one.

Present the Honorable Samuel Blatchford, dist. judge.

EUGENE S. EUNSON & JACOB LAGOWITZ
vs.
NORMAN W. DODGE, T. BENJAMAN MEIGS, AND William E. Dodge.

This cause came on to be heard, at this term, upon the pleadings, and proofs, and an agreed statement of facts, and was argued by Fred-

eric H. Betts, esq., for the complainants, and S. D. Law, esq., for the defendants; and thereupon it was ordered, adjudged, and decreed that the bill of complaint herein be dismissed, and that the defendants do recover of the complainants, the sum of twenty-five dollars, their costs of this suit.

(Signed) SAM'L BLATCHFORD.

37 Supreme Court of the United States,

EUGENE S. EUNSON & JACOB LAJOWITZ
vs.
NORMAN W. DODGE, T. BENJAMIN MEIGS, & William E. Dodge.

To the honorable the Supreme Court of the United States:

The appeal of Eugene S. Eunson and Jacob Lajowitz, the above-named complainants and appellants, respectfully sheweth:

That, upon the 19th day of July, 1871, the above-named complainants filed their bill in the circuit court of the United States for the southern district of New York, against the above-named defendants for infringement of letters-patent of the United States, granted to John Myers and Robert G. Eunson for an improved machine for sawing thin boards, &c., dated May 23, 1854, and extended for seven years, and assigned to the complainants; that the said defendants, filed their answer thereto, alleging that the machine used by them was the same as that used by their predecessors in business before, and at the time of the expiration of the original term of said letters-patent, and that the said prede-
38 cessors in business owned and operated said machine under a right under said letters-patent, during the original term of said patent, and that said defendants therefore had a right to use the same; that replication was duly filed thereto, and proof taken and agreed upon.

That, on the 27th day of November, 1871, a final decree was made and pronounced in the cause, wherein it was in substance adjudged and decreed, "that the bill of complaint be dismissed, and that the defendants recover of the complainants the sum of twenty-five dollars, their costs.

Wherefore, these appellants appeal from the whole of said decree of said circuit court of the United States, and respectfully prays that the decree of the said circuit court, and the bill, answer, pleadings, proofs, evidence, and proceedings in the said cause, may be sent to the Supreme Court of the United States without delay; and that the said Supreme Court will proceed to hear the said cause anew, and that the said decree of the circuit court, and every part thereof, may be reversed, and a decree made for an injunction against infringing said letters-patent; and for an account of profits, with costs, or such other decree as to the said Supreme Court shall seem just.

Dated November 27, 1871.

MATHEWS & BETTS,
Sol'rs for Appellants.
FREDERIC H. BETTS, *Counsel.*

39 On reading and filing the above petition of appeal, ordered that the said appeal be allowed.

Dated November 28, 1871.

SAM'L BLATCHFORD,
District Judge.

(Endorsed:) U. S. Supreme Court. Eugene S. Eunson & al vs. Norman W. Dodge & al. Appeal to the Supreme Court. Filed Nov. 28, 1871.

40 Supreme Court of the United States.

EUGENE S. EUNSON & JACOB LAJOWITZ
vs.
NORMAN W. DODGE, T. BENJAMIN MEIGS, & William E. Dodge.

Know all men by these presents that we, Leopold Hass, of the city of New York, Julian L. Myers, of the city of New York, are held and firmly bound unto Norman W. Dodge, T. Benjamin Meigs, and William E. Dodge, of the city of New York, in the sum of five hundred dollars, to be paid to the said Norman W. Dodge, T. Benjamin Meigs, and William E. Dodge, their executors, or administrators; to which payment, well and truly to be made, we bind ourselves and each of us, jointly and severally, and our and each of our heirs, executors, and administrators, firmly by these presents, sealed with our seals, dated this 27th day of November, 1871.

Whereas, the above-named Eugene S. Eunson and Jacob Lajowitz, have taken an appeal to the Supreme Court of the United States, to reverse the decree rendered in the above-entitled action by the circuit court of the United States for the southern district of New York:

Now, therefore, the condition of this obligation is such, that if
41 the above-named Eugene S. Eunson, and Jacob Lajowitz shall prosecute their said appeal to effect, and answer all costs and damages, the amount of the decree and just damages for the delay, if they fail to make good their plea, then this obligation shall be void; otherwise to remain in full force and virtue.

LEOPOLD HASS.
JULIEN L. MYERS.

Sealed and delivered in the presence of—
HENRY MCCABE.

Sworn to before me this 27th day of Nov., 1871.
[NOTARY PUBLIC'S SEAL.] CHA'S H. COOPER,
Notary Public.

CITY AND COUNTY OF NEW YORK, *ss:*

Leopold Hass and Julian L. Myers, being duly and severally sworn, each for himself, deposes and says that he resided in the city of New York, and is a house-holder therein, and is worth the sum of one thousand dollars over and above all his debts & liabilities, & exclusive of property exempt by law from execution.

LEOPOLD HASS.
JULIEN L. MYERS.

Sworn to this 27th day of November, 1871.
[NOTARY PUBLIC SEAL.] CHA'S H. COOPER.
Notary Public.

(Endorsed:) U. S. Supreme Court. Eugene S. Eunson & al vs. Norman W. Dodge, & al. Security.
Bond & security approved Nov. 28, 1871.
SAM'L BLATCHFORD,
Dist. Judge.

Filed Nov. 28, 1871

42 By the Hon. Samuel Blatchford, one of the judges of the circuit court of the United States, to Norman W. Dodge, T. Benjamin Meigs, and William E. Dodge:

Whereas Eugene S. Eunson and Jacob Lajowitz have lately appealed to the Supreme Court of the United States from a decree lately rendered in the circuit court of the United States for the southern district of New York, made in favor of you, Norman W. Dodge, T. Benjamin Meigs, and William E. Dodge, and have filed the security required by law, you are therefore hereby cited to appear before the said Supreme Court at the city of Washington, on the 1st Monday of December, 1871, next, to do and receive what may appertain to justice to be done in the premises.

Given under my hand, at the city of New York, in the southern district of New York, in the second circuit, the 28th day of November, in the year of our Lord one thousand eight hundred and seventy-one.

SAMUEL BLATCHFORD,
District Judge.

43 U. S. Supreme Court.

EUGENE S. EUNSON & JACOB LAJOWITZ
vs.
NORMAN W. DODGE, T. BENJAMIN MEIGS, & William E. Dodge.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

John Dorrity being duly sworn, saith that, on the 28th day of November, 1871, at the city of New York, he served on the solicitor of the above-named appellees, S. D. Law, esq., a copy of the appeal and a copy of the citation filed in this cause with the clerk of the circuit court, in and for the southern district of New York, by delivering copies of the same to a clerk in the office of the said solicitor, he being then absent therefrom, and by leaving said copy of the appeal for said appellees in the clerk's office of the circuit court aforesaid.

JOHN H. DORRITY.

Sworn to this 29th day of November, 1871.
[NOTARY PUBLIC SEAL.] JOSEPH FETTRETCH,
Notary Public N. Y. Co.

44 (Endorsed:) U. S. Supreme Court. Eugene S. Eunson & al. vs. Norman W. Dodge & al. Citation. Filed Nov. 28, '71.

(Indorsed:) U. S. Supreme Court. Eugene S. Eunson and Jacob Lajowitz vs. Norman W. Dodge, T. Benjamin Meigs, and William E. Dodge. Appeal to the U. S. Supreme Court. Security and citation. Mathews & Betts, sol'rs for appellants, 31 & 33 Pine st., N. Y. C.

(Indorsement on cover:) No. 537. Eugene S. Eunson, Jacob Lagowitz, plaintiffs in error, vs. Norman M. Dodge, T. Benjamin Meigs and William E. Dodge. S. New York C. C. U. S. Filed 14th December, 1871.

Supreme Court of the United States.

EUGENE S. EUNSON ET AL.,

vs.

NORMAN W. DODGE, ET AL.

IN EQUITY, No. 288.

On Appeal from the Circuit Court of the United States, for the Southern District of New York.

Abstract of Pleading & Proofs, and Points on behalf of Appellants.

WHITNEY & BETTS,
Solicitors for Compl'ts.

FREDERIC H. BETTS,
Of Counsel.

New York:
SAMUEL HAMILTON & SONS, PRINTERS,
61 CEDAR STREET,

1873.

Supreme Court

OF THE UNITED STATES,

ON APPEAL FROM THE CIRCUIT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK.

EUGENE S. EUNSON and JACOB LAGOWITZ,
Complainants and Appellants,

vs.

NORMAN W. DODGE, T. BENJAMIN MEIGS and WILLIAM E. DODGE,
Defendants and Respondents.

ABSTRACT OF PLEADINGS AND PROOFS.

The bill of complaint is in the usual form in cases of infringment of patents.

The bill alleges that John Myers and Robert G. Eunson were the original and first inventors of a sawing ma-

chine ; that Letters Patent were granted to them therefor on the 23d day of May, 1854 ; that the Patent was extended for seven years from May 23, 1868 ; that the complainants are the owners of the Letters Patent for the State of New Jersey ; that the Patent has been adjudicated valid ; that the defendants have infringed the Patent by the use of a sawing machine at Jersey City, Hudson City, New Jersey, during the extended time of the patent, without right or license ; that the complainants have thereby suffered great damage, and the defendants have made large profits.

The bill prays an injunction, account of profits, and assessment of damages.

The answer of the defendants admits the grant and extension of the patent ; alleges want of knowledge as to the title of complainants ; admits that the patent has been adjudicated valid ; admits that the defendants use a sawing machine containing the patented devices and combinations ; alleges that the defendants are the successors in business of the firm of Dodge & Co.; that Dodge & Co. bought the machine in question in 1865 from the Huntington Machine Works ; that Dodge & Co. subsequently purchased all the right of the patentees in the *original* term of the patent for Hudson County, New Jersey, and used said machine in said county till January, 1869, when the business passed into the hands of the defendants, who have continued to use said machine ever since.

Insists that having owned the right for Hudson County, N. J., under the original term they are protected by virtue of the acts of Congress in the use of the same machine during the extended term. Prays that the bill be dismissed.

Replication was duly filed.

The proofs for conciseness are embodied in an agreed state of facts.

The grant and extension of complainant's patent are conceded. The title of the complainants to the patent for the State of New Jersey is admitted.

The defendants are co-partners under the firm name of Dodge and Meigs, and are the successors in business interest of the firm of Dodge and Co. In May, 1865, the Huntingdon Machine Works, of Newark, Essex County, New Jersey, built and sold, *without right or license*, to Dodge and Co., a sawing machine, which infringed the 1st, 2d and 4th claims of the patent.

Dodge and Co. were notified of the infringement, and thereupon purchased of one Schureman, an assignee of the patentees, the right under the patent for Hudson County, for the original term of the patent (Exhibits B, C & D). Dodge and Co., and the defendants, their successors, used the machine up to the end of the *original* term, and have continued to use it ever since, during the *extended* term.

The Circuit Court held that the defendants were protected by the concluding sentence of the 18th section of the Act of Congress of July 4, 1836, and dismissed the bill.

The complainants appealed.

STATEMENT OF ERRORS OF THE CIRCUIT COURT.

1. The Court erred in holding that the facts proved protected the defendants, in the use of the infringing machine, during the *extended* term of the complainant's patent.

2. The Court erred in not declaring that all rights of the defendants to use the machine complained of, expired at the expiration of the original term of the patent, viz.: on May 23, 1868.

3 The Court erred in holding that the defendants, having without right, purchased an *infringing* machine, and having afterwards purchased a sectional interest in the patent, which interest expired by its terms on May 23, 1868, were *after said date* protected in the use of *said* machine.

4. The Court erred in holding that the defendants were protected in the use of the machine complained of, by virtue of the Act of Congress of July 4, 1836, section 18.

5. The Court erred in not granting and decreeing to the complainants, appellants, the relief as prayed in the bill.

POINTS ON BEHALF OF THE APPELLANTS.

I. The defendants seek to justify their infringement of complainant's patent during the extended term, by the claim that having been assignees of the patent for Hudson County, New Jersey, *during the original term*, the machine used by them during such original term, is privileged to be used *during the extended term* by the 18th Section of Patent Act of July 4, 1836, and under the decisions of this Court in Wilson *vs.* Rousseau, 4 How., 646.

Bloomer *vs.* McQuewan, 14 How., 539.

Chaffee *vs.* Boston Belting Company, 22 How., 217.

Bloomer *vs.* Millinger, 1 Wall, 340.

II. It is conceded on behalf of the appellants that if the defendant's machine had been one which was *lawfully* constructed by or purchased from the patentees or their assignees, that the defendants would be protected under the doctrine of the cases cited. It is claimed, however, that the defendants case is distinguished from all the case cited, because the machine used by them was not a *lawfully made* machine, and was never purchased from the owners of the patent.

III. The section of the Act of July 4, 1836, relied upon relates to the grant of extensions or renewals of letters patent, and ends with the following words :

> " And the benefit of such renewal shall extend
> " to assignees and grantees of the right to
> " use the thing patented to the extent of
> " their respective interests therein."

This Court has in the cases above cited, given the construction of this proviso in the case of *machine* patents.

It has been held that this proviso is intended to protect persons who have *purchased a machine from the patentees* during the original term, in the use of the same machine during the extended term. This rule is founded upon the doctrine that the patentee should " be entitled " to but *one* royalty for a patented machine, and conse- " quently when a patentee *has himself* constructed the " machine, or authorized *another to construct and sell* " it, or to *construct* and use and operate it, and the con- " sideration has been paid to him for that right, he has " then to that extent parted with his monopoly, and " ceased to have any interest in the machine." By the *lawful* sale of a machine, the right to use it has passed to the purchaser *in perpetuity*, or so long as the machine exists.

Chaffee *vs.* Boston Belting Company, 22 How. 217, 223.

Bloomer *vs.* Millinger, 1 Wall, 340, 351.
Bloomer *vs.* McQueen, 14 How., 549.
Wilson *vs.* Rousseau, 4 How., 646.

IV. The case of the defendants is distinguished from the cases cited by the absence of the very fact that in each of those cases brought these defendants within the permission of the statute, viz., the fact that the machine had been "*lawfully made*," and the patentee had sold it, and with it *ipso facto* the perpetual right to use it ; in the present case the defendants machine was *not* "lawfully made."

It was "built and sold without right or license under said patent" (Transcript of Record, p. 13,) hence the patentees never have been paid for the perpetual right to use it.

V. It is submitted, therefore, that the defendants do not come within the terms of the 18th Section, as construed by this Court.

This point was distinctly raised in the late case of Hawley *vs.* Mitchell (1 Off. Gazette of Pat. Off., p. 306,) and it was there held that a person through having the right to use a machine during the original term of a patent, could not continue such use during the extended term, under the 18th Section of Act of 1836, *unless* he acquired a lawful title *as against the patentee in the machine itself.* affirmed by this Court. 3. Off. Gaz 341

In the present case the defendants had no such title ; they procured the machine of an infringer, in violation of complainant's rights, and were protected in the use of it during the original term, only because they took it into territory *then* out of the possession of the patentees.

The decisions which confine the benefits conferred by the clause cited from the 18th Section, to those persons

who have in *lawful* use a *lawfully made* machine at the expiration of the original term of the patent, were very lately considered and approved in the Pennsylvania Circuit, and the contrary decisions of Day *vs.* the India Rubber Company (3 Blatchf., 488,) and Wilson *vs.* Turner (Taney's Circt. Ct. Dec., 378,) were commented on and disapproved.

Wetherill *vs.* the Passaic Zinc Company, 2 Off Gaz., 471.

VI. The consequences to patentees which would follow from such a construction of the statute as would protect the defendants would be grave.

The rule contended for by the defendant is that *any* person who is in the lawful use of *any* machine during and at the expiration of the original term of a patent, (whether such machine itself was lawfully made and sold or not) can continue the use of such machine in the extended term, by virtue of the statute.

If this be so, then it a patentee sells any single county in the United States, infringers may before the expiration of the original term take their machines within that county, have them licensed and run up to the expiration of the original term; according to the defendant's doctrine the machines then become *lawful* machines, and are placed outside of the monopoly of the patent. If this be so then they may be run *anywhere* in the United States, to the utter destruction of the patentes rights.

Or again, if a person is possessed of an infringing machine, and acquires a license for the *original term* by the payment of a monthly royalty, and uses the machine up to the expiration of the first term, his *contract* then expires, but under the doctrine contended for by defendants, his *machine* is a lawful machine, and may be run discharged of the obligation to pay any royalty.

VII. But even if such a right as contended for by the defendants could exist, the defendants are not persons to avail themselves of it.

If a right to run the machine in the extended term survives in any body, it survives in the identical persons who held the right during the original term. The defendants are not those persons.

The owners of the right for the original term, were Anson G. P. Dodge, T. Benjamin Meigs and Charles Hebbard; the persons who now claim the right, are Norman W. Dodge, T. Benjamin Meigs and William E. Dodge.

VIII. In the foregoing points the case has been presented under the construction adopted by this court, of the 18th section of the act of 1836, and it is submitted that it is shown that the defendants do not come within the permission of the statute as defined by this court.

If, however, under the new circumstances of this case, any new construction is to be given to the 18th section of the act of 1836, then it is submitted that the true construction of the words "and the benefit of such renewal shall extend to assignees and grantees of the right to use the thing patented, to the extent of their respective interests therein," is this:—That persons who have purchased *by contract* an equitable interest *in the extended term*, are endowed by the statute with a *legal* title to the "benefit" of such extended term, to the extent of their respective interest therein.

See dissenting opinion of Judges Woodbury & McLean.

Wilson *vs.* Rousseau, *supra.*

That this construction is admissible, and, it is respectfully submitted, is the only one consistent with *all* the words of the clause is shown by an analysis of the phraseology.

a. The "benefit of the extension" given to the assignees must, of course, mean the continuation of the rights secured by the patent; this is what the extension is and what it gives.

b. The words "The assignees and grantees of the right to use" the thing patented. These words refer to persons of different classes, but no larger or different rights are given to "assignees" than to "grantees of the right to use."

Wilson *vs.* Rousseau, supra,

c. "The thing patented" is of course the invention, machine, process, or art, &c.; whatever is new and has been for the first time given to the world by the patentee.

d. "The extent of the interest of the assignee or grantee therein."

Extent of interest may be measured by duration, location or quality.

"Therein" may refer to the *extension*, or it may refer to the "*thing patented*," or it may refer to "the right to use the thing patented."

According to these several interpretations of the word "therein," three readings of the section may be had.

1. The benefit of the renewal extends to assignees or grantees of the right to use the thing patented, to the extent of the interest they have acquired *by contract in such renewal*.

i. e.—This construction merely converts *equitable* titles into *legal* titles,

or—

2. The benefit of the renewal extends to the assignees or grantees of the right to use the thing patented to the extent, &c., to which they have acquired an interest in "the thing patented," machine, process, &c.

i. e.—If they have bought from the patentees a machine or process, they have a right to continue to use it,

or—

3. The benefit of the renewal extends to assignees or grantees of the right to use the thing patented to the extent to which they shall have acquired the right to use the same.

i. e.—Either the right acquired during the original term is continued without change into the extended term, or no right in the extended term is given, unless it has been already contracted for.

The first two constructions exclude these defendants from the benefit of the renewal, (1) because they had acquired by contract *no* interest *in the extended term*, and (2) because they had no interest, as against the patentees, *in the machine itself*.

The third construction is the one contended for by them, viz.: that having had an interest in the original term, such *interest* is extended by operation of law, and in contravention of the contract, so far as to protect them in the use of the machine, they originally unlawfully acquired

In order to maintain this construction they contend (1) that "assignees" and "grantees of the right to use," are separate classes of persons, and entitled to rights *as such*, and that they, the defendants, having been assignees under the original term, their right as *such assignees*, are extended by the renewal; and (2) that the word "therein" refers to the interest of the assignee or grantee in the *original* term, which is by force of the statute renewed and invested in the defendants.

It is contended, however, on behalf of the appellants that:

(*a*) The construction which would make "assignee" one class of persons, and "grantees of the right to use the thing patented," another class, *for the purpose of distinguishing the rights acquired by them by the extension* is inadmissible, because the purpose of the extension is to reward the insufficiently renumerated inventor, who has, perhaps, been compelled to assign away his invention for a poor consideration, and a construction which gives to assignees, technically so called, the same right in the extension which they had in the original term, instead of reinstating the inventor in his right, gives it away to the assignee.

That the term "assignees and grantees of the right to use the thing patented," does not distinguish the rights of such persons from one another is decided in Wilson *vs.* Rosseau, and is assured by the omission of the word "respective" before "interests therein," in the reenactment of this clause by the act of July 8, 1870.

"Assignees and grantees of the right to use the thing patented," are either persons who have purchased the "thing patented" for use, or persons who have purchased "the right to use the thing patented," *i.e*, a license to use the invention.

Bloomer *vs.* McQueen, 14 How. 549.

(*b*) Nor can the word "therein" refer to the interest of the assignee or grantee under the original term, for the extent of the interest of the assignee or grantee, may have been either exclusive or limited; perpetual or terminable

"If "therein" refers to such interest, then such interest must be extended just as it was, without any modification. This involves consequences from which the Court might shrink as a practical nullification of the act. No case (not even Day *vs.* Rubber Co., 3 Bl.,) is bold enough to hold that exclusive rights during the original term, are perpetuated *as exclusive rights* during the extended term by the mere force of the law, and against the stipulation of the parties. If the word "therein" refers to the "interest of the assignee in the right to use the thing patented," and "assignees and grantees of the right to use the thing patented," are persons having purchased the right to use, then the interest of such person, if exclusive during the original term, is exclusive during the extended term, for the benefit of the renewal is extended to them, and to the extent of their interest. Such a construction would destroy the value of the extension, and contradict the de-

liberate opinion of this Court in the cases cited.

Again, the construction of the word "therein," referring to the "right to use the thing patented," does not operate equally. The patentee of a machine who has granted the right to construct and use a machine, such as a railroad brake, during his extended term has the whole market to supply, except so far as it has been actually supplied by brakes which are constantly wearing out, while the patentee of a process who has granted the right to use the process during the original term, is exposed to the competition of a continuous and unlimited use of the process.

The only way to escape these constructions is to construe the word "therein," as referring to the extension, or the right to use the thing patented during the extension.

This construction gives effect to the word "assignee," and also to the word "grantee." It vests in any person, whether assignee or grantee, the legal right which before existed only in contract.

This construction was said in Wilson *vs.* Rousseau, to be an insufficient basis to satisfy the section It is submitted that it is as adequate a basis as the construction adopted by the Court in that case, which, as appears by Bloomer *vs.* McQueen, only gives rights which the defendant had *independent and in spite of* any statute of the United States.

IX. The defendants having no interest either in the machine as against the patentee, or in the extended term, there should have been a decree against them for a perpetual injunction, and an account of profits and assessment of damages with costs.

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